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U.S.--NATIONAL PARK
SERVICE

LAND MANAGEMENT HAND-
BOOK

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NATIONAL PARK SERVICE

HANDBOOK

LAND MANAGEMENT

RELEASE NO. 1
January 14, 1959

The attached Land Management Handbook is designed to fill the need of field personnel for detailed information on the many phases of land acquisition and special uses of land and water resources.

The Handbook explains the Service policy and program; the mechanics of appraisals; negotiations of options; and the various methods of acquiring land. A section is devoted to special uses and special use permits. A third section on Water Resources and Water Rights, now being prepared, will be distributed later.

This material is published in loose leaf format with a self-cover and is punched for insertion in a standard 3-ring binder if desired.

All amendments or revisions of current material, issued in the future, will be in this same format and may be inserted in appropriate places in the Handbook. Comments and suggestions for improvements in this volume, made through the usual channels, will be appreciated at any time.

Only one copy of this Handbook is being distributed in this initial mailing. After it has been reviewed by all those responsible for land acquisition, special use, and water resource functions, determine how many copies are required, fill out and mail to the Washington Office the tear-off portion of this transmittal sheet. The additional copies will be sent by return mail.

You will notice the attached material is dated October 1958. Work was begun on it at that time, however, as of the issue date, January 1959, this material is current and up to date.

This transmittal sheet may be filed for future reference.


Assistant Director

Attachment

Interior - Duplicating Section - Washington, D. C.



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NATIONAL PARK SERVICE

HANDBOOK

LAND MANAGEMENT

AMENDMENT NO. 1
May 18, 1961

The following new and amended pages of the Land Management Handbook are attached for insertion in your copy of that publication.

<u>Section</u>	<u>Chapter</u>	<u>Insert New Pages</u>	<u>Destroy Old Pages</u>
	Contents	i, v, vi, and vii	i, v, vi, and vii
1	2	Appendix 1, Form NPS-L-3	new
	6	Appendix 1, pp. 1 thru 4	Appendix 1, pp. 1 thru 5
	7	7	7
	7	Appendix 2, pp. 1 & 2	new
2	1	3, 4, 4a, 10, 11, & 12	3 and 10
	2	Appendix 1, pp. 1 & 2	new
	3	1	1
	3	Appendix 1, pp. 1 & 2	new
	4	1, 2 & 3	1 thru 4
	6	1	1

PEN AND INK CORRECTION

Please correct spelling of the word "Abstractor" on page 1 of Appendix 1 to Section 1.

Sample Form NPS-L-3, Tract Record and Valuation Data, etc., is included in this material as Appendix 1 to Section 1, chapter 2 to illustrate a correctly executed sample form. This form was inadvertently omitted from the original issue of the Handbook.

The attached revised Land Purchase Option and Contract form supersedes the one now in the Handbook.

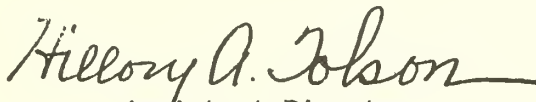
The procedure for cancellation of special use permits, with a suggested form letter, as set forth in Section 2, chapter 1, hereby cancels FO 540 of March 19, 1947, which should be destroyed. Inclusion of the instructions requiring applicants to furnish maps, sketches, etc., with their application for special use permits

hereby cancels FO 1-61 of February 23, 1961, which also should be destroyed.

The Service statement concerning the waiving of fees for overhead REA power lines is supplied as Appendix 1 to chapter 3, Section 2.

Your attention is invited, also, to a restatement of Service position concerning access with reference to private roads entering or crossing parkway motor roads, as set forth in Section 2, chapter 4, page 1, attached.

After bringing the attached material and the contents of this transmittal sheet to the attention of all interested officials, the pages should be inserted in the Land Management Handbook. This transmittal may then be filed for future reference.


Assistant Director

Attachments

Interior - Duplicating Section - Washington, D. C.

NATIONAL PARK SERVICE

HANDBOOK

LAND MANAGEMENT

AMENDMENT NO. 2
June 15, 1961

The attached page 4 of chapter 1, section 2, is for insertion in your copy of the National Park Service Land Management Handbook. It supersedes existing page 4, chapter 1, section 2, Release No. 1 of October 1958, which should be destroyed.

This revised page amends the paragraph relating to the use of the nondiscrimination clause as promulgated in Executive Order 10925 of March 6, 1961 (26 F.R.1977).

After bringing the new material to the attention of all those concerned, it should be placed in the Handbook and this transmittal sheet filed for future reference.

Additional copies of this amendment are available, but requests should be based on actual needs.


Assistant Director

Attachment

NATIONAL PARK SERVICE

HANDBOOK

LAND MANAGEMENT

AMENDMENT NO. 3

August 24, 1961

This amendment is issued to correct an error made in Amendment No. 2 of June 15, 1961.

Transmitted for insertion into your copy of the National Park Service Land Management Handbook are new pages 4 and 4a to replace the pages 4 and 4a bearing the legend "Amendment No. 1, May 1961".

The pages comprising chapter 1, section 2 of the Handbook (after insertion of the new pages 4 and 4a, Amendment No. 3) should read as follows:

<u>Page</u>	<u>Legend</u>	<u>Date</u>
1	Release No. 1	October 1958
2	"	"
3	Amendment No. 1	May 1961
4	Amendment No. 3	August 1961
4a	Amendment No. 3	August 1961
5	Release No. 1	October 1958
6	"	"
7	"	"
8	"	"
9	"	"
10	Amendment No. 1	May 1961
11	"	"
12	"	"
Appendix 1, page 1	"	"
Appendix 1, page 2	"	"

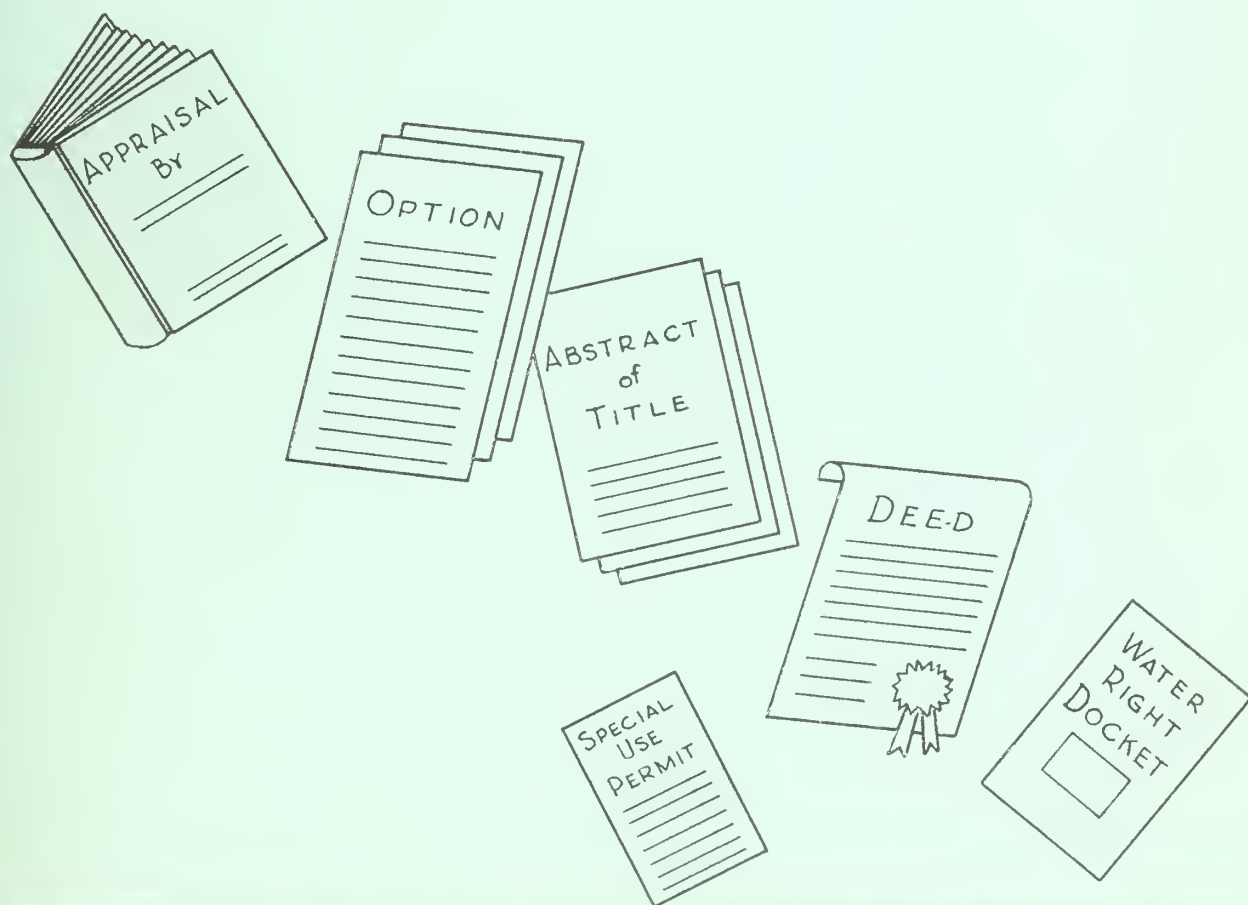
After bringing the amended material to the attention of all those concerned, this transmittal sheet should be placed in the Handbook for future reference, along with the transmittal sheet for the erroneous Amendment No. 2.

Wiley A. Tolson
Assistant Director

Attachments

Interior - Duplicating Section - Washington, D. C.

LAND MANAGEMENT HANDBOOK



UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
DIVISION OF OPERATIONS
1958

LAND MANAGEMENT
Real Property and Acquisition

HANDBOOK
 Section 1
 *Page 1

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INTRODUCTION

The purpose of this Handbook is to set forth in a single volume a set of principles and detailed instructions governing the acquisition and special uses of land and water resources by the National Park Service.

The Handbook may be used as a guide to supplement the Superintendent's knowledge of real estate transactions, water resources, and land use permits. It may also be used as a textbook in instructing National Park Service personnel in land acquisition, water resource, and special land use procedures. It is not anticipated that this Handbook will furnish answers to every knotty problem or to resolve title questions that are often encountered in acquiring lands or water rights. Such unusual cases should be referred to the Regional Office or to the Director where field personnel have doubt about matters of this nature.

We are indebted to the many field officials whose suggestions and comments enabled us to compile the material contained herein.

POLICY, METHODS OF ACQUISITION; ESTATE TO BE ACQUIRED

Policy

It is the policy of the National Park Service to acquire all non-Federal lands within the areas of the National Park System as rapidly as possible to facilitate the management and administration of these areas for the purposes for which they were established. (See also Chapter 4, Part 100, Volume 1, Administrative Manual).

The implementation of this policy and the achievement of the objective of the Service require the formulation of an orderly land acquisition program by each area having non-Federal lands within its boundaries. The execution of such a program, however, is dependent upon varying circumstances, including the availability of funds. The Washington Office finalizes such field programs into an over-all Service program which is necessarily geared to the available funds.

General

This section deals with acquisitions in existing areas.

Large-scale acquisition projects for areas to be established, or in newly established areas, are usually handled as special projects. Procedures relating to such projects vary to such an extent, depending on the legislation authorizing the establishment of the areas, that it is not feasible here to attempt to deal with such acquisitions in a general way. Special instructions, as required, will be issued by the Washington Office, from time to time, to the official in charge of such projects.

Methods of Acquisition

Acquisition by the United States of the non-Federal lands within the areas of the National Park System may be accomplished by purchase; condemnation, when authorized; donation; exchange; and transfer from other Federal agencies.

Estate to be Acquired

1. General. In general, the Service is authorized to acquire lands, interests therein, improvements, and water rights. The applicable statute should be checked in each case. Usually,

the Service attempts to acquire fee simple title to the lands involved in an acquisition. The acquisition of fee simple title means that the owner has no further right to, or interest in, the lands (including improvements thereon and water rights, if any) acquired and that the Government acquires all the interests in the property being conveyed to it. The term "fee simple title", for practical purposes, denotes the absolute ownership of the land and all appurtenances or improvements comprising a part of the land.

Also, it occasionally happens that an owner wishes to exclude, or except, from a sale to the United States a part of his total ownership. For example, an owner wishes to sell his land but wants to exclude, or except, from the sale a part of the acreage, or some interest in the property that may not be considered administratively objectionable by this Service.

Occasionally, a situation may occur where an owner holds title to land which is subject to reservations or exceptions made by others prior to conveyance of title to the present owner with whom the official may be negotiating. Thus, while the present owner may not desire to make any reservations or exceptions in connection with a sale to the United States, the property must be acquired subject to such reservations or exceptions (unless he is required to purchase them or otherwise have them released) since, obviously, he can convey to the United States only that which he owns. Negotiations with the owner of the other interests may be necessary in such cases.

In any event, the Superintendent or Regional Office recommending a particular acquisition should determine precisely the property, and ownership (estate) of the proposed vendor, to be acquired, noting particularly reservations and exceptions, if any, which are to be allowed to the owner or a third party. The estate (or interest) an owner may have in a parcel of land can best be ascertained from an abstract, certificate of title, title insurance policy, preliminary title report, or interim binder.

2. Reservations and Exceptions. As noted above, there is an important distinction between a "reservation" and an "exception" or "exclusion" in the acquisition of real property. A reservation by an owner is merely a limitation on the estate conveyed, whereas an exception is an exclusion from the conveyance of a part of the property owned by the vendor. For example, a person owning land (with buildings and water systems thereon), and water rights,

within a Park sells his land, with improvements and water rights, to the United States, subject to a life estate. This is a reservation by the seller. An owner of a large tract of land wishes to sell his land, less his improvements and a small acreage surrounding them, to the United States. This is an exception or exclusion.

The most frequently encountered reservations (for which appropriate reductions in the purchase price must be made - see Appraisals, Chapter 5), are as follows:

- a. Rights-of-way. In most cases, rights-of-way are necessary reservations in deeds. These cover highways, accesses, railroads, power lines, telephone lines, water lines, sewer lines, and others of a utility nature. In most cases, such reservations are merely easements and, if a particular right-of-way is no longer used for the purpose for which it was reserved, it usually vests in the owner or owners of the adjoining land upon abandonment or nonuse. Since termination (or merger in the fee as described in legal language) may depend upon a number of factors, each case must be considered on its merits. The main factors to take into consideration in such reservations are determinations as to whether they interfere appreciably with the park or monument use of the lands being acquired and the practicability of acquiring such reservations.
- b. Mineral. It may in some cases be difficult to acquire land for national park and monument purposes without leaving the minerals or mineral rights reserved to the owner or a third party. In fact, some States, by virtue of Constitutional or other limitations, are not authorized to convey minerals or mineral rights in State lands when they are sold or exchanged.

It is very important, therefore, for the negotiator to determine the status of the minerals or mineral rights in any lands proposed for conveyance to the United States for national park and monument purposes and know beforehand whether purchase, subject to such rights, is administratively satisfactory.

- c. Grazing. Occasionally, lands have been acquired with reservations to the vendor for grazing privileges.

Usually, however, these privileges are for a limited period. Care should be taken by the negotiator to determine if such privileges are to be retained by the seller and, if so, ascertain beforehand if they are administratively unobjectionable or not.

- d. Agricultural. Sometimes lands have been acquired with agricultural privileges reserved to the vendor. These privileges, however, generally are for a year or less, allowing the vendor to complete the harvest of any agricultural crop growing at the time of acquisition. There is generally no objection to such reservation and the only concern in these cases is that the reservation is specific as to the type of agricultural use and extent of time limit of the reservations.
- e. Temporary Use and Occupancy. Such reservations are usually found in the acquisition of buildings and structures and allow the vendor a specified time to continue to occupy and use the premises in order to find other housing or buildings or to remove certain specified equipment or harvest crops.
- f. Timber. Rarely is there any proposal by the vendors to reserve timber removal rights on lands proposed for inclusion in the National Parks or Monuments. However, the negotiator should know if such rights are to be left outstanding in any unusual situation of this kind.
- g. Life Estates. This type of reservation allows the vendor to retain use of the property conveyed for the remainder of his life. While such reservations are usually undesirable, oftentimes it is the only means by which properties may be acquired short of condemnation. Moreover, such reservations allow land acquisition funds to reach much further than otherwise, as there is, in almost all cases, a considerable monetary value attached to life estates. In cases where life estates, or estates for years, appear feasible, it is essential to determine the full nature of the estate.

LAND PROGRAM

Land Records and Forms

The preparation and maintenance of adequate records of all lands (Federally owned and non-Federally owned) within the areas administered by the National Park Service are highly important to an orderly program of land management as well as acquisition. The various land records which it is desirable to maintain are discussed below. While, of course, there are a few Parks having no in-holdings (that is, lands and water resources owned by persons or agencies other than the United States), at least some of the records discussed are applicable to all Parks.

Land Status Maps. The Branch of Lands of the Washington Office is responsible for the preparation of basic land status maps for each Park. One copy of this map is to be distributed to the appropriate Regional Office and one copy is to be distributed to the Park. Once the basic map is prepared and distributed, it becomes the responsibility of the Park--where a professional staff exists--or the Regional Office, in the case of Parks not having a professional staff, to amend, revise, and keep the land status maps current. Copies of revisions of the basic land status map should be distributed by the Park to the Regional Office and the Washington Office. In case the Regional Office prepares revisions of the basic maps, copies of such revisions should be furnished the Park and the Washington Office.

The land status map shows not only the exterior boundaries of the Park but also shows, by different colors or by appropriate notations, the respective ownerships of all lands included within the Park.

Land status maps covering a number of Parks have been prepared. However, due to limited personnel, such maps have not been prepared for many Parks. Thus, until the Washington Office can complete basic land status maps for every Park, each Park or Regional Office having a professional staff should prepare a map for local use reflecting all non-Federally owned lands within the Park.

The preparation of such an informal land status map, as an interim measure pending completion of the basic land status map,

is desirable not only for the guidance of field officials in their day-to-day management of the Parks but also to assist them and other Service officials in any planning for the Park. For example, if a proposed development will necessitate the acquisition of certain non-Federal lands, then before the improvement can be made the land in question must be acquired. Also, the involvement of non-Federal land in a proposed Service improvement should be noted on the Project Construction Program. Those concerned with construction programming then will be apprised of this fact. They will not, in the absence of arrangements for the acquisition of such land, program funds for a specific improvement only to find, when the funds are available and the Service is ready to proceed with a project, that work cannot begin because of non-Federal ownership of a portion of the land needed therefor.

Land Status Maps may be prepared from information obtained from the tract books of the local office of the Bureau of Land Management (where Parks are located in public domain States) or from ownership land records maintained by county recording offices. Other sources of information also may be used, such as the records maintained in the Branch of Lands of the Washington Office, Public Land Orders affecting a Park, local abstract company offices, real estate offices, etc.

National Park Service Form NPS-L-3 and Sketch Map

1. Form NPS-L-3. With ownership information assembled from the sources mentioned in connection with the discussion above of land status maps, each Park, in which authority exists for the acquisition of non-Federal lands, is responsible for the preparation of Form NPS-L-3 (Tract Record and Valuation Data of Land to be Acquired) for each parcel or tract of non-Federal land included within the exterior boundaries of the Parks administered by the National Park Service. A correctly completed sample of Form NPS-L-3 with necessary notes for its preparation is attached at the end of this chapter (see Appendix 1).

Most Parks responsible for the preparation of these forms have prepared some of them. However, special attention should be given to the completion, as soon as possible, of these forms for all non-Federal lands within the Park. The purpose of the NPS-L-3 form is to provide for administrative use a ready reference and source of information for all non-Federal lands in the System. It is also the basis for compilation of the amount of non-Federal land in the System and the approximate value of it. This

information is needed frequently for answering inquiries from various individuals, including Members of Congress, and for preparing statements for presentation to the Department, the Bureau of the Budget, the General Services Administration, and Congressional Committees. Also, the form is an essential document for the implementation, in detail, of the land status map--either the final basic land status map or a local interim map. The form contains, in addition, valuable information needed for the preparation of Project Construction Programs, which may involve contemplated developments on such non-Federal lands.

In Parks where there are only a few tracts of non-Federal lands, the preparation of these forms should be relatively simple and it should not be difficult to revise them as changing circumstances and conditions warrant. In Parks containing a large number of tracts of non-Federal lands, particularly with subdivisions, it is realized that the preparation of this form poses an enormous job. Keeping the forms current would be even a greater task. However, each Park should attempt to complete an initial set of the forms for all non-Federal lands as rapidly as possible. In preparing these forms initially, those tracts which have a high priority, or which for reasons of expediency may be scheduled for acquisition in the near future, should be given first consideration.

It is hoped that the information included by the Park on the Form NPS-L-3 will be correct. It is pointed out, however, that the form is not a legal document and later information may reveal that the information included in the form is not entirely correct, particularly as to boundary descriptions of land involved and even, occasionally, ownerships. Thus, NPS-L-3 forms should be reviewed from time to time to insure that they are kept current and as accurately as possible. Before negotiations are undertaken for the acquisition of the non-Federal land, later information may indicate that the Form NPS-L-3 is in error. In such cases, a revised Form NPS-L-3 should be prepared reflecting the correct information. Where the error in the Form NPS-L-3 is not discovered until negotiations have been started for the acquisition of the property--for example, the appraisal reveals the error--the Form NPS-L-3 need not be revised since the correct information concerning the land will be included on the Form NPS-L-1, discussed later.

Form NPS-L-3 is due for each tract of non-Federal land. Revisions should be submitted as changing conditions and circumstances warrant.

Form NPS-L-3 should be prepared by the Park, in triplicate (quadruplicate for coordinated areas), the original and one copy being furnished the appropriate Regional Office and the third copy being maintained in the Park files. The Regional Office will forward the original Form NPS-L-3 to the Washington Office, attention: Branch of Lands.

2. Sketch Map. A sketch map the size of Form NPS-L-3 should accompany the report and be attached to it. The map should show the boundaries of the tract, the location of improvements, its relation to adjoining Government land, and physical characteristics. The scales should be determined by the size of the tract. If a larger map is necessary, it should be made in multiples of the report form and folded to that size. Scales will be one inch equals 5, 10, 20, 40, or 80 chains, or their equivalent in feet, for Parks in the public land States. For eastern Parks the scale may vary with the base map available.

National Park Service Form NPS-L-4, Land Acquisition Program Priority List. A Land Acquisition Program Priority List should be prepared by each Park having non-Federal lands.

While there are several columns on this form to be completed, special attention is called to two of them, namely: "Numerical Priority" and "PCP Reference."

If in the preparation of this form a "Numerical Priority" is assigned to only the first 20, or so, pieces of land, and thereafter the word "None" appears in this column, a Park's priority list becomes a relatively short projection of its land acquisition program. Of course, tracts involved in early MISSION 66 construction must be included high in the priority list. All tracts of non-Federal lands are to be included on this form. However, by not attempting to assign "Numerical Priorities" to an unrealistic number of tracts, a Park may avoid complete revision of its priority list when it wishes to change a few priorities. For example, only the pages affected in the revision of priorities need be rewritten and distributed and these revised pages may be inserted in the original priority list. Of course, if revisions are too extensive, it would be preferable to revise the entire list.

It is important, as pointed out earlier in this chapter, to indicate in the "PCP Reference" column all non-Federal lands which may be involved in improvements covered by a Project Construction

Program. The inclusion of the PCP number on the Land Acquisition Program Priority List insures an adequate cross-reference for this vital information.

Some Parks have, from time to time, prepared a Land Acquisition Program Priority List in different format from that of the approved form and, thus, have not used Form NPS-L-4. There is no objection to the preparation of a Land Acquisition Program Priority List in such manner, provided the information on the improvised priority list includes all of the information called for in the approved form. It is preferred, however, that all Parks prepare Land Acquisition Program Priority Lists on the approved form.

Form NPS-L-4 should be completed by the Park, in triplicate, the original and one copy being forwarded to the appropriate Regional Office. The Regional Office will, in turn, forward the original to the Washington Office, attention: Branch of Lands.

Each Regional Office--using the Land Acquisition Program Priority Lists prepared by the various Parks--should prepare a Regional Land Acquisition Program Priority List. In the case of these lists, it is believed that only those tracts assigned a numerical priority by the Parks should be included; otherwise, the Regional lists will become unwieldy.

Of course, if after taking the matter up with a Park, the Regional Director believes that some tract of land, which the Park has not assigned a numerical priority, should be included in the Regional list and assigned a numerical priority, there is no objection.

The Regional Priority List should be prepared, in duplicate, the original being forwarded to the Washington Office, attention: Branch of Lands.

National Park Service Form NPS-L-1, Land Ownership Record. The completion of this form is initiated in the Branch of Lands of the Washington Office following the completion of an acquisition. It is prepared in triplicate. Usually all three forms are forwarded to the Regional Office for inclusion of data not available in the Washington Office. Where necessary, the forms are further transmitted to the Park office for completion. When finally completed the original is returned to the Washington Office, attention: Branch of Lands; one copy is retained in the Regional Office; and one copy is retained in the Park files.

Deed numbers (blanks for which appear on both the NPS-L-3 and NPS-L-1 forms) are assigned by the Branch of Lands following an acquisition, and only after such assignment by the Branch of Lands should any deed number be used on any land forms by a Park.

Other Land Forms. There are four other land forms used in the Land Program. All of these forms are prepared by the Branch of Lands of the Washington Office. These forms are: NPS-L-2, NPS-L-5, NPS-L-6, and NPS-L-7.

The NPS-L-2 form, Summary Sheet of Land Acquired, is compiled from pertinent data appearing on the completed NPS-L-1 form.

The other three forms mentioned above deal with compilations of statistical information affecting the Land Program and, almost without exception, are prepared in one copy each for use in the Washington Office.

Supply of Land Forms. All of the foregoing numbered forms used in the Land Program may be obtained by requisition (Form DI-1) to the Washington Office, in six copies.

Tract Numbers

Each non-Federal tract of land in an established Park, if not already identified by a tract number, will be given a tract number which will thereafter identify it. Non-Federal tracts within an established Park at the time that tract numbers are assigned should be numbered consecutively, beginning with No. 1.

Thereafter, if non-Federal lands are included within the exterior boundaries of additions to the Park, such non-Federal tracts, for the convenience of local identification, may be given a different series of numbers. All non-Federal tracts within the addition should be numbered consecutively and in the series assigned to the addition. For example, assume that all of the non-Federal lands within a Park have been numbered and that beginning with No. 1 they number through 360. Thereafter, there is an addition to the Park which includes non-Federal tracts. The non-Federal tracts in this addition may be numbered beginning with the series 400. All non-Federal tracts in the new addition should receive consecutive numbers in the new series, thus: 400, 401, 402, etc.

If other additions to the Park are made which contain non-Federal tracts, these may also be assigned a new series, if desired, for local identification. For example, assume the numbers in the first addition end with Tract No. 512. Then, the series in the second addition may begin with 600 and continue consecutively through all non-Federal tracts in this addition.

The foregoing procedure may be followed in each successive addition to the Park which involves non-Federal tracts, if desired.

When a tract is divided for any reason, after having been assigned a tract number, its several divisions will each retain the original number followed by a letter. Thus, Tract 27 may become by such division Tracts 27-A, 27-B, and 27-C. Should one of these divisions be further divided, each tract established by such subdivision would retain its original number and letter designation followed by a number. Thus, Tract 27-B might become 27-B-1 and 27-B-2.

Informational Notes for Preparation of Form NPS-L-3

Most of the blank spaces on this form are self-explanatory. However, a few, as follows, require some explanation.

Classification and Value of Land. Classification indicates the various types of land of which a tract might be composed, such as salable forest, cutover lands, grazing lands, arid lands, lands occupied by buildings, etc. If it is considered necessary, it is suggested that a breakdown of cover types be entered on the reverse side of the report under "Special Features". Resort and summer home properties and archeological lands should be indicated in the Classification column. Agricultural lands should be indicated as irrigated, grazing, pasture, or dry farming lands as the case may be.

Kind and Value of Improvements. All improvements should be shown, such as residences, barns, tourist cabins, resort structures, water rights, water systems, light plants, irrigation works, roads, fences, etc.

Special Features. Give a brief description of the natural, scientific, or archeological features of value to provide an over-all understanding of the character of the tract. Elaborate on the land classification, such as special cover, if thought to be exceptional.

Form 10-123(L-3)
 (April 1959)

UNITED STATES DEPARTMENT OF THE INTERIOR
 NATIONAL PARK SERVICE

TRACT RECORD AND VALUATION DATA
 OF LAND TO BE ACQUIRED

State Utah

Tract No. 34

County Washington

Deed No. _____

Civil Subdivision T41S, R10W, Sec. 28 Zion National Park Watchman, Res-Utility Area
 Name of Park or Park or Area Section of Park or Area

RECORD OF OWNERSHIP

Conveyed to: (Name and address)	Date	Acres	Deed Book	Page	Remarks
Ernest K. and Rhoda D. Crawford	8/5/47		U-11	192	W.D.
Springdale, Utah	1/23/32	5.12	U-8	18	W.D.
	1/23/32	.73	U-8	20	W.D.

CLASSIFICATION AND VALUE OF LAND

Tax No.	Classification	Tax Valuation				Appraisals		
		Area acres	Year	Value	Basis 40 % Tax Rate Total Tax	1	2	3
228	Agricultural	5.84	1960	\$550	.05480 \$30.14	\$4,510	\$5,412	
						400	400	
						200	200	
225	Agricultural	4.08	1960	\$205	.05480 11.23			
	9.02 A. Irr.Level Crop land							
	.40 A. Orchard							
	.50 A. Non-Irr. land							
	Total	9.92		\$755	\$41.37	\$5,110	\$6,012	

KIND AND VALUE OF IMPROVEMENTS

228	House, frame	1960	\$300	.05480	\$16.44	\$2,150	\$3,500	
			not assessed					
	Barn					250	100	
	Shed (garage)					50	50	
	Total		\$300		\$16.44	\$2,450	\$3,650	

RECORD OF APPRAISALS

	Name and address of Appraiser	Title	Date
1	James B. Felton	Chief Park Ranger	1958
2	James B. Felton	Chief Park Ranger	3-1-61
3			

If tract is required in Project Construction Program (PCP) give reference number _____

Will additional personnel, development and/or equipment be needed to administer this tract: No If so, state briefly: _____

Form NPS-L-3
Page 2

Legal Description: Parcel a - Starting at a point 249 feet East from NW corner NE $\frac{1}{4}$, Sec. 28; thence S45°10' E, 318.9 feet, Starting point East 265 feet; thence S50°E, 692 feet; thence S85°W, 205 feet; thence N55°W, 739 feet; thence 24.7 feet to place of beginning.

Parcel b - Beginning at a point S15°45'E, 610 feet from $\frac{1}{4}$ corner common to Section 21 and 28, T41S, R10W, SLM to place of beginning; thence S57°15'E, 481 feet; thence N55°45'E, 267 feet; thence N36°45'E, 140 feet; thence N54°15'W, 596 feet; thence S32°45'W, 418 feet; to place of beginning containing 5.12 acres more or less.

Parcel c - Beginning at a point S33°40'E, 1020 feet from $\frac{1}{4}$ corner common to Section 21 and 28, T41S, R10W, SLM; thence S57°15'E, 206 feet; thence N33°45'E, 120 feet; thence N07°15'W, 164 feet; thence S55°45'W, 267 feet; to place of beginning, containing .73 acres, more or less.

Liens: None

Description of existing or outstanding rights, rights of way or reservations, if any: Appurtenant water rights in the Flanigan Ditch and Springdale Pipeline Company. Easement to Springdale Pipeline Company assigns the right to erect, construct, install and lay and thereafter use, operate, inspect, repair, maintain, replace, remove a pipeline for culinary purposes together with the right of ingress and egress for the purposes for which the above mentioned rights are herein granted. (Book U-12, Pg. 276, 6-16-53).

Should they be acquired with the land (Yes) or are they administratively acceptable: _____

Description of Improvements: House, frame, 3 room with loft and full basement. Electricity and plumbing but no bath.

Barn, (roof blew off from high wind)

Shed, used as garage for old car.

Special Features: In two parcels which are separated by the Arden G. Schiefer property used as right of way.

Justification for acquisition: Under plans developed in MISSION 66 the tract is needed for expansion of sewage disposal facilities, access roads and additional campground space.

Priority in purchase program: _____

Remarks: Mrs. Crawford is a widow and gets a \$10 deduction from total taxes listed.

If space is insufficient for any particular subject attach additional sheet and mark "See attached sheet for continuation"

52625

EMPLOYEES OWNING REAL ESTATE

The acquisition by Service employees of privately owned in-holdings in the areas administered by the National Park Service, while not illegal, is contrary to policy. An employee should not acquire any real property in his own, or in another's, name within the boundaries of those areas.

This policy is outlined in a regulation of the Secretary which provides that all officers and employees of the Department of the Interior, and their spouses, are prohibited from acquiring voluntarily, or retaining an interest in, any lands or resources administered by the Bureau of Land Management.

In the event that any employee of the Service owns land in his own, or in another's, name within the boundaries of an area administered by this Service, it is requested that he furnish the Director with a complete history of its acquisition.

SURVEYS

Property Surveys

Surveying in-holding property within the Park boundary is not a construction activity. Surveys involving the maintenance of real property records must be financed from "On Site Management and Protection Funds." A survey that is a prerequisite to acquisition of land by the Service may be financed from land acquisition funds.

Topographic and Construction Surveys

These surveys are scheduled by the appropriate Division of Design and Construction Office. Surveys needed for the preparation of construction plans and specifications, and for the guidance and control of construction operations for projects in the current program, shall be financed from "Plans, Surveys, and Supervision Funds" for the project. Advance Planning Funds should be used to finance surveys needed to provide data required for the preparation of plans for projects scheduled for inclusion in subsequent programs. Authorization for the use of Advance Planning Funds is made by the Chief, Division of Design and Construction.

Water Resources and Water Right Surveys

These surveys are scheduled by the Chief, Water Resources Section, and shall be financed from Management and Protection and Construction funds, respectively. Water resources surveys are frequently made to facilitate advance planning, in which case the Water Resources Section is guided by proposals of the Regional Directors and Division of Design and Construction, and the two programs should be properly integrated. Water resources funds (Account 143.2) should be used for surveys which are a prerequisite to purchase of water rights; Building and Utility construction funds should be used for surveys where the water rights are already owned by the Service, but the surveys are necessary for development purposes; and on-site area M&P funds are available for surveys which are necessary for general management and protection purposes. In other words, the purpose for which the survey is made determines the funds to be charged. Water right surveys are primarily to supplement data in the construction plans and should become progressively less necessary as new construction plans are made with proper section corner ties and details as to capacities and other hydraulic properties. Appreciable economy and larger

reserves for emergency needs can be obtained if these surveys are programmed as part of the planning and design projects and costs are prorated accordingly.

Contractual Surveys by the Geological Survey

Many topographic, water resources, and some water right surveys and studies are made by the Geological Survey in accordance with interbureau agreement. Arrangements for new surveys or studies are made through designated liaison officers of the two Services in Washington, but preliminary programs and estimates should be arranged at field level, if or when representatives of both Bureaus are available in the vicinity. Annual arrangements for continuing surveys and studies do not need formal approval through the liaison officers unless there is a significant change in the program or project.

Boundary Surveys

Assistant Director Tolson's memorandum of June 15, 1951, and Director Wirth's memorandum of August 25, 1955, excluded boundary surveys from the Project Construction Program. These surveys should be justified under "On Site Management and Protection" if the work is done by park personnel. If the surveys involve employing a special survey party or having the Bureau of Land Management do the work on a reimbursable basis, and park funds are inadequate to finance the cost, the Regional Director may allot M&P reserves for such nonrecurring items. Here again the purpose of the survey determines the funds to be charged. The Chief of Design and Construction shall continue to coordinate these surveys.

Limited boundary surveys may be an essential prerequisite for designing current or subsequent construction projects. In these circumstances they shall be financed from Plans, Surveys, and Supervision or Advance Planning Funds. (See also pertinent sections of Volume 5 of the Administrative Manual.)

Boundary Fences, Monuments, Posts, Marking, etc.

The construction of these and similar items is classified as miscellaneous construction operations. They should be supported by the Project Construction Program proposals having index numbers under miscellaneous classification. Costs for surveys required for the control and guidance of the construction operations described in the proposals may be financed from Plans, Surveys, and Supervision funds for the respective projects.

APPRAISALS

General

Much of the material in this chapter, with adaptations to meet the needs and requirements of the National Park Service, has been obtained from the Report of the Committee on Land Appraisal Practices in the Department of the Interior, May 16, 1956, and the Real Property Appraiser's Handbook, published by the U. S. Army Corps of Engineers, October 1955.

The Real Property Appraiser's Handbook of the Corps of Engineers, while directed primarily to the needs and requirements of that agency, deals exhaustively with the subject of appraisals. Because of its value as a reference book, we have purchased a small quantity of the volume and limited distribution has been made to the five Regional Offices and to those Parks having a particularly acute and active acquisition problem. Parks to which a copy of this reference book has not been distributed may borrow a copy from the appropriate Regional Office. It is extremely important, however, that accountability for these books be maintained at all times, since the available supply is limited and it is difficult, or even impossible, to replace copies which are lost or misplaced.

It is to be emphasized that the Real Property Appraiser's Handbook is for reference purposes only, and procedures prescribed therein for the Corps of Engineers, which have no application to problems peculiar to acquisitions by the National Park Service, should be disregarded.

Importance of Appraisals

The success or failure of any real estate transaction is inseparably bound to its fair market value. The heart of the real estate transaction is, therefore, the fair market value estimate or appraisal, and this places the real estate transaction on a higher and more complicated plane than transactions dealing in expendable commodities where the field of duplication is practically unlimited and supply or production is capable of seasonal control to meet demand. The importance of sound appraisals cannot be overemphasized, not only because the courts have established basic rules governing exercise of the power of eminent domain, but because of the Government's obligation to serve the general public and to protect the common welfare in

estimating and paying just compensation, under the fifth amendment of the Constitution, for the taking of private property for public use.

Effective appraisal work assures the Government that the lands involved are acquired at fair prices, both as regards buyer and seller; that good public relations with the citizens affected are maintained; and that, generally, costly litigation is avoided. Poor appraisals may mean an out-of-pocket loss to the Government of large sums of money from buying at too high a price, or paying the costs of unnecessary condemnation actions, as well as a significant loss of public good will.

Experience has demonstrated that, regardless of how reasonable and fair appraisals may be, some acquisitions by condemnation may be necessary due to unsuccessful negotiations as to prices. This is no reflection on the appraiser. It represents the reaction of some landowners.

Responsibilities of the Park in Obtaining Appraisals

General. When authority has been granted to have an appraisal (appraisals) made, it is the responsibility of the Park to determine precisely the property and estate to be acquired. For example, it is essential to know the boundaries of the property to be acquired; whether water rights are owned and are to be included in the acquisition or whether they are to be excluded therefrom; the estate owned and to be acquired by the United States--that is, does the proposed vendor have fee simple title to the property and is fee simple title to be acquired, or are there reservations or exceptions affecting his title. As a general rule, if the Park has, with care, completed a Form NPS-L-3 for the tract of land involved, this information is reflected on that form; or, perhaps, it may be obtained from the owner. In the event there is any doubt concerning the boundary of the property, the estate owned, etc., it is advisable at this time to obtain a certificate of title or a preliminary title report from a reputable title attorney or company covering the property owned by the person with whom negotiations are being conducted. Usually such a certificate or preliminary title report may be obtained at a rather nominal cost, which may be paid from a Park's On Site Management and Protection activity funds. Ofttimes, valuable time and considerable expense may be saved later by taking this precaution. It is important to remember that the appraiser (appraisers) whom the Park employs (as discussed below) will

appraise only the property and the estate which the Park instructs him to appraise. Thus, if a water right, for example, is involved in the acquisition and the Park does not determine this until after the appraisal has been made, another, or a supplemental, appraisal must be made. Also, if the vendor is to reserve a life estate and the Park does not so inform the appraiser, a supplemental appraisal must be made to determine the value of the property subject to this reservation. Likewise, if mineral rights have been reserved in the United States, a State, or a third party, and the Park does not so inform the appraiser, and he appraises the property on the basis of a unencumbered or full fee simple title being acquired, the appraisal has overstated the value of the estate to be acquired and a supplemental appraisal will be required before the transaction may be completed. In such a case an abatement in the over-all value is in order to the extent of the value of the outstanding interest.

Number of Appraisers Required. It is the practice of the Service that only one appraisal need be made on property having an estimated value of \$10,000 or less; two appraisals should be made of property having an estimated value of between \$10,000 and \$50,000; and that three appraisals should be obtained for all property having an estimated value in excess of \$50,000. Where more than one appraisal is required, it is contemplated that each appraisal will be an individual one with a separate report prepared by each appraiser, rather than a joint, group, or board appraisal and one report signed by all appraisers.

When the number of appraisals has been determined in accordance with the foregoing, it is then the responsibility of the Superintendent, consistent with the authority delegated to him, to employ the required number of appraisers.

Selecting the Appraiser (Appraisers)

1. Qualifications. Appraisers are expected to have the necessary background of experience; be intelligent and discreet with dignified courtesy; have ability and enterprise to gather necessary facts; correlate and analyze such facts; demonstrate good judgment in forming opinions of fair market values; and, finally, submit their findings, analyses, and valuation estimates in report forms of such sufficiency and completeness as will convince readers or reviewers of the soundness, logic, and reasonableness of their conclusions. Appraisers, selected to appraise property proposed for acquisition by the Service,

should be able to defend their conclusions should they be called to testify in the Federal Courts in condemnation proceedings. An appraiser who has a present, prospective, or future interest in a property, the owner, mortgagee, or other lienholder is, for obvious reasons, ineligible to appraise the particular property.

2. Government or Private Appraiser. The Secretary of the Interior in a memorandum of December 26, 1956, to the Director of the National Park Service, stated that the Service could continue to utilize the services of private appraisers since our Service-wide land acquisition program was relatively minor in proportion to the program of some other Bureaus of the Department. He also stated that the Service should utilize appraisers of other Departmental Bureaus to the greatest possible extent.

In commenting on the Secretary's memorandum, the Acting Director of the Service, in a memorandum of February 7, 1957, advised the Director of Management Research of the Department that: "We have utilized appraisers of other bureaus of the Department and of other Federal agencies to a varying degree for many years. We shall continue and step up this practice in accordance with the character, classification, location, and improvements thereon, of the real estate to be appraised."

Some Parks may find it feasible to utilize Government staff appraisers for a number of acquisitions, while other Parks may find it feasible to utilize them only occasionally. Private appraisers should be utilized when Government staff appraisers are not readily available or have had only limited experience on the particular appraisal problem at hand; when the probability of litigation makes employment of a non-Federal appraiser advisable; and when appraisals can be performed more economically by private appraisers. Generally, then, experience, availability, and economy of costs are the criteria to be used to judge whether outside private appraisers should be used to do a specific appraisal job, or whether Government staff appraisers should be requested of another Bureau since the National Park Service does not have sufficient staff appraisers to handle its appraisal work.

If it is determined that a Government staff appraiser should be used on a particular acquisition, requests for the use of Government staff appraisers should be sent by the Park to the appropriate Regional Office for handling, either with the appropriate Regional Office of the Bureau in which the appraiser is

employed, or for forwarding to the Washington Office to make necessary arrangements with the central office of the Bureau in which the appraiser is employed. Usually, in those cases in which it is possible to obtain a Government staff appraiser, if reimbursements are required, payment for the costs involved will be handled on a Form 1081.

If it is determined that a private appraiser should be used on a particular acquisition, the Superintendent, depending upon the authority redelegated to him by the appropriate Regional Director, may, generally, secure the services of an appraiser, or appraisers, by negotiated contract.

Circumstances justifying securing of services by contract for appraisal must show that such negotiation is in the public interest. The negotiations should not be limited to one source if several sources are available. In negotiating for appraisals by contract, more than one person or firm judged to be competent should be solicited before the contract is negotiated and executed. For the procedure covering negotiated contracts see the Procurement Handbook.

Private appraisers are usually selected on a local basis from regions where the properties are located and the individuals selected should have experience in connection with the type of property to be appraised. Their general local reputation may be an important factor in their selection.

Instructing the Appraisers. It is the responsibility of the Superintendent, or his representative, to instruct the appraisers as to the property to be appraised; the estate to be appraised, calling particular attention to reservations or exceptions which are to be made in the proposed acquisition; and any conditions pertinent to the proposed acquisition. To facilitate the work of the appraiser, thereby, in most cases, reducing the cost of the appraisal to the United States, the Superintendent should arrange with the property owner, or his representative, to accompany the appraiser during his inspection of the property, if at all possible. If such arrangements are not made by the Superintendent, then, of course, the appraiser must make them, usually with some delay and at additional cost to the United States for the time spent by him in making the arrangements. It is also a good idea to have a representative of the Park accompany the appraiser during his inspection to clarify, on the spot, any questions which may arise during the inspection, thus obviating the need for a possible second inspection of the property.

It has also been found that the cost of appraisals may be reduced if the Park cooperates in obtaining and providing the appraiser with a folder, containing a description of the property, a sketch map of the exterior boundaries, location of buildings, if any, etc., the measurements of the buildings, and also a timber cruise in applicable cases and where such a cruise is available. If this information is not provided the appraiser by the Park, then, of course, he must obtain it for himself.

The instructions to the appraisers should consist of a factual recitation concerning the property to be appraised and the terms and conditions surrounding its proposed acquisition. Absolutely no reference should be made, by casual statement or otherwise, as to the price at which the owner may have offered the property to the United States, or as to the price at which the United States hopes to acquire the property. Reputable appraisers resent such efforts to influence their estimates of value.

Responsibilities of the Appraiser

It is a responsibility of the appraiser to inform himself of all conditions of a proposed transaction for which his appraisal is to be made. While the majority of appraisals may be for the purpose of evaluating certain permanent rights in property, it is frequently necessary to estimate value for a wide variety of temporary uses. The appraiser should determine the estate to be appraised. In some cases, a fee simple estate is to be appraised, in others surface rights only, easements, rights-of-way, leaseholds, or other unique interests. It is also the appraiser's responsibility to use only complete and thoroughly verified data. This applies, also, to data furnished by the Park. The date of valuation is always important.

After gathering all of the facts relating to a property, it is the appraiser's responsibility to weigh and consider them with good judgment and to make his own conclusions in a sound professional manner, completely unbiased by any consideration favoring either the owner or the Government.

Appraisal Process

The appraiser should bear in mind that he may be called upon in condemnation proceedings, or otherwise, to defend and support the validity and competence of his estimates. As a result of

this appraisal, should it be necessary to call upon him as an expert witness, he will be expected to present all of the facts considered in making the appraisal and to advocate and defend, in a logical and convincing manner, the conclusions reached.

When inspecting a property being appraised, it is desirable that the appraiser see and talk personally to the owner or, in the owner's absence, his agent or representative, if possible.

Finally, it is the responsibility of the appraiser to prepare, or have prepared, a report of his appraisal.

Appraisals should conform to established and generally recognized appraisal practices and procedures in common use by private appraisers.

General

The appraisal process is an orderly procedure in estimating values. It consists of defining the problem, making a preliminary survey, planning the appraisal, gathering basic data, applying the Market Data Approach, the Income Approach, and the Cost Approach, correlating the three approaches and, finally, forming an opinion of value. Appraising, being under the law of economics, is not a science producing findings of an exact nature.

The appraised value of a piece of real property is an informed opinion by one experienced in land valuation, based upon a consideration of all legally proper elements, of the fair market value of the property. There is no such thing as exactitude in arriving at values by the appraisal process. This is particularly so in the case of acquisitions by the National Park Service since, frequently, there may be a limited market for such lands, few such parcels available, and few current comparable sales to others for use in the appraisal process. It is for this reason, among others, that there may be differences in the opinions of the several appraisers--in some cases substantial differences. Accordingly, it is for administrative determination, including initial recommendation by the Superintendent, of what offer should be made to the owner by the Service. The analysis of the appraisals and the determination as to what the offer should be is a delicate process requiring careful consideration at all levels of the Service: the Superintendent, the Regional Director, and the Washington Office.

Basis of Appraisal

All appraisals should be made on the basis of "fair market value" unless there are specific instructions to the contrary.

While definitions of "fair market value" as promulgated by various authorities, differ slightly, the basic principles may be stated as follows: "Fair market value" is defined as the amount in cash, or on terms reasonably equivalent to cash, that would, in all probability, have been arrived at between an owner willing but not obliged to sell, and a purchaser who desires but is not obliged to buy, and in ascertaining this figure there should be taken into account all considerations that fairly might be brought forward and reasonably given substantial weight in bargaining by persons of ordinary prudence having knowledge of the property. The use to which real property, upon acquisition, may be put by the Government should not operate to give it a value in excess of, or less than, its fair market value.

Three General Approaches

Three approaches to estimating fair market values are recognized and recommended for use. They are: the Market Data Approach, the Income or Earnings Approach, and the Depreciated Replacement Cost Approach, for brevity referred to as the Cost Approach.

1. The Market Data Approach. This is the most direct approach in estimating fair market value. It is estimating the market value of a given property by comparison with other similar properties in the same vicinity which have been sold recently in the open market. Comparable sales considered should be relatively current--within the past five, or preferably three, years. The Market Data Approach is concerned with the principle of substitution in that typical buyers will not purchase a property at a price higher than the prices of similar properties having comparable locations, characteristics, future earning or utility capabilities. The Market Data Approach, generally, is preferred above all others. It is the most frequently used and best understood of all the appraisal approaches. In ideal circumstances it probably comes nearest to reducing the appraisal to the point of least approximation. It is the only approach to value that reflects the balance of supply and demand in actual trading in the market place and it develops the most acceptable and convincing evidence for condemnation trials. However, the appraiser should

invariably give due consideration to all factors tending to affect market value.

2. Income Approach. The Income Approach to value is an appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment which produces the net income. Therefore, extreme care must be used in estimating the net income and in using the proper rate to capitalize the net income to arrive at the value indicated by the Income Approach. It may be difficult under this approach to clearly differentiate between the operating skill of the owner, or his agent, and the actual earning power of the property.

3. Depreciated Replacement Cost Approach (Cost Approach). In this approach, the fair market value of the land, bare and subject to improvement, is added to the depreciated replacement cost new of the improvements to arrive at an indication of the value of the property. The value of the land bare and subject to improvement is always estimated by a study of comparable sales. The estimate of the replacement cost new of the improvements is based on current cost of labor and materials for construction of improvements of like utility. From this cost new estimate is then deducted the depreciation that can actually be observed in the buildings. Obsolescence (functional and economic depreciation) may also be a factor in this situation. The resulting value is known as the value indicated by the Cost Approach. In a sense this approach is another type of comparative or market data approach in that the land value is estimated by comparison with similar tracts of land recently sold, and the cost estimate of the structures is developed by comparison with the cost of comparable structures.

The Cost Approach develops the upper or maximum limit of fair market value. This is because the value indication is found by adding together the land and the buildings, and further because it is extremely difficult to estimate accurately accrued depreciation. Thus, this approach is most generally used as a check on the estimate of value indicated by the market data approach in that this approach definitely indicates the upper limit of market value which is the cost of the property.

Discussion. For additional discussion of these three approaches, as well as the correlation of the three approaches, reference may be had to the Real Property Appraiser's Handbook, mentioned earlier in this chapter.

Reservations and Exceptions

As pointed out earlier, values must be assigned to reservations and exceptions which are involved in the proposed acquisition. It is the appraiser's responsibility to assign these values. The value of continued use and occupancy by a vendor may be determined through the use of the "Inwood Valuation Premise" which is explained below.

Estate Valuation by Inwood Valuation Premise

In several instances, relative to approval of options where the vendors have desired to retain use and occupancy of their property for a period of years subsequent to purchase by the Government, this Office has referred to the "Inwood Valuation Premise" in connection with determining the worth of the desired use and occupancy. We have been requested to give an explanation of the "Inwood Premise."

The application of the Inwood valuation premise is much simpler than the explanation of it. McMichael's Appraising Manual, published by Prentice-Hall, Inc., gives the clearest explanation of the Inwood premise of any available manual and, along with its tables, provides all the data necessary for evaluating the continued use of property after acquisition by the Government. On other realty problems this book is very useful and probably handiest of any to use.

The annuity process of capitalization commonly referred to as the Inwood compound interest premise involves, for practical purposes, the use of tables of present worth factors compiled from an equation developed by Inwood. This equation is:

$$x = \frac{(1 + r)^n - 1}{r(1 + r)^n}$$

in which "n" equals period in years and "r" equals percent. The underlying principle is based on an annuity concept that a sum of money collectible in the future is today worth less than the full amount. It is worth that amount which, if deposited today and compounded annually at a given rate of interest, would equal the given sum on the future date of collection.

This premise is the basis upon which most real estate investments are amortized. The principle is adaptable to other realty computations. This Office uses the Inwood premise for computing the present monetary worth of continued usage and occupancy by vendors of property acquired for park purposes. Needless to say, the grant of continued use and occupancy is usually motivated by special circumstances and/or acquisition factors.

The continued occupancy of Government property is in general for a specified number of years with the vendors retaining the full use which, of course, has value to them. This is translated into monetary value based upon actual or estimated net rentals substantiated by disinterested appraisers. The net rental excluding the real estate charges for operation, normal maintenance, and taxes, often works out to about 60 percent of the gross rental.

The rate of percentage to use in realty financing is debatable. This Office, on the assumption that 5 percent interest is readily obtainable on first mortgages and does not require undue financial acumen to secure, believes it is a fair rate for both the vendors and the United States. We refer to our application of it as "discounted at 5 percent according to the Inwood valuation premise."

The Inwood table computed on this equation is usually compiled for the present value of \$1 per annum for each year from 1 to 100 and for percents ranging between $1\frac{1}{4}$ percent and 8 percent. It is a simple procedure to enter this table under the column headed "years" and find opposite the year under the column headed "percent" a factor by which the net rental per year is multiplied to compute the present worth to the vendors of their continued usage and occupancy. This monetary value, representing the present worth of the usage and occupancy consideration, is deducted from the agreed value of the property to arrive at the cash consideration.

To illustrate the process, assume a hypothetical acquisition of improved property appraised at \$100,000 with a gross yearly rental of \$10,000 - the vendors to retain full usage and occupancy thereof for a period of five years. The normal operating and maintenance costs plus taxes total 40 percent of the gross rentals. Then, 60 percent of \$10,000, the gross rent, is \$6,000 per year net rental. Enter the Inwood table opposite five years and under 5 percent is the factor 4.329. This factor of 4.329 multiplied

by the net rental per year of \$6,000 equals \$25,974, the present worth of five years' usage and occupancy, discounted at 5 percent according to the Inwood valuation premise. Deducting \$25,974, the use and occupancy consideration, from \$100,000 leaves \$74,026 as the cash consideration. Then the usage and occupancy consideration will be exhausted at the expiration of five years when the vendors will have had the use of United States property with a net rental value per year of \$6,000 and a total value of \$30,000 for the entire period. It would not be good business for the vendors to settle at the beginning of the period for \$30,000 use and occupancy consideration, which would be the sum of future yearly benefits collectible over a 5-year period.

To illustrate an application of the Inwood premise by an annuity example, assume an investor is approached by a borrower who states that for the loan of \$25,974 the investor will be repaid by an annuity of \$6,000 a year for five years which returns the investor a total of \$30,000 on his \$25,974 investment, using a sinking fund which at the end of the fifth year will be exhausted.

The Mathematics

Original investment	\$25,974.00
1st year's interest at 5% in sinking fund	<u>+1,298.70</u>
End of 1st year before withdrawal	27,272.70
End of 1st year withdrawal	<u>-6,000.00</u>
Beginning 2d year in sinking fund	21,272.70
2d year's interest at 5% in sinking fund	<u>+1,063.64</u>
End of 2d year before withdrawal	22,336.34
End of 2d year withdrawal	<u>-6,000.00</u>
Beginning 3d year in sinking fund	16,336.34
3d year's interest at 5% in sinking fund	<u>+ 816.82</u>
End of 3d year before withdrawal	17,153.16
End of 3d year withdrawal	<u>-6,000.00</u>
Beginning 4th year in sinking fund	11,153.16
4th year's interest at 5% in sinking fund	<u>+ 557.66</u>

End of 4th year before withdrawal	\$11,710.82
End of 4th year withdrawal	<u>-6,000.00</u>
Beginning 5th year in sinking fund	5,710.82
5th year's interest at 5% in sinking fund	<u>+ 285.54</u>
End of 5th year before withdrawal	5,996.36
End of 5th year withdrawal	<u>-6,000.00</u>
Deficit	- 3.64
Should equal	0.00

Theoretically, the last withdrawal should exhaust the sinking fund exactly but due to the use of an Inwood tabular factor rounded off at three decimal places, there is a deficit of \$3.64. A precise but laborious calculation could be made, using Inwood's equation. By the equation this factor is 4.329457 and the present worth value is \$25,976.74. However, such precision is not necessary in real estate transactions and is a meaningless refinement among many incommensurate values which enter into appraisals and negotiations.

An examination of the above computations, and considering the figures in relation to use and occupancy, shows that the money which the vendor does not receive, in the amount of \$25,974, the present value of five years' future use and occupancy, will return the vendor free use of property with a \$6,000 a year net rental value and five years of such free use and occupancy having a total net rental value of \$30,000.

Another type of usage and occupancy constituting a life estate for the vendors with the United States retaining remainderman rights is likewise computed in this Office on the Inwood valuation premise. The tenure of occupancy is based on the life expectancy of the vendor with the greatest estimated longevity. The Commissioner's 1941 Standard Ordinary (1930-1940) Table included among Standard Mortality Tables and approaching the average of these tables is our usual reference. These tables are, of course, averaged from mortality statistics. The calculations are similar to those described in the above example. There is an element of chance in the grant of a life estate; sometimes it is the vendor; sometimes it is the United States that benefits therefrom.

There are other methods of computing the present worth of future use of United States property but the Inwood premise appears to satisfy experienced realtors and appraisers.

The inheritance tax laws in many States specify the methods for evaluating life estates, annuities, etc. Wolf & Corcoran, in their reference book Inheritance Tax Calculations set out formulae, actuarial data, interest rates and tables for use in calculation. Unfortunately, we are unable to locate a copy of this book in the Department in order to quote authoritatively therefrom. Occasionally, vendors of life estates refer to their respective State laws as bases for computing their offers. In our opinion these methods, involving as they do capitalization of the value of property, are not applicable for evaluating life estates in lands owned by the Government. Our approach to the life estate in Government lands is that of net rent which the beneficiaries could realize in a lifetime.

The Washington Office will endeavor to supply answers to any other questions regarding continued use and occupancy of Government lands that may be raised.

Appraisal Report

An appraisal report, briefly, is a written report describing, discussing, and analyzing (each in detail) all of the matters developed in the appraisal process, and setting forth the appraiser's opinion of value as of a given date.

Appraisal reports should not be subject to editing, revision, or correction except by the appraiser preparing the report, nor should the appraiser be required to change his report.

An appraisal report sets forth the appraiser's own opinion of value. As such, common ethics forbid revision of the report by other than the appraiser. Nor should an appraisal report be returned to its author, or authors, with instructions, expressed or implied, to change the opinion of value or any other substantial part of the report. However, if upon review by the reviewing appraiser there appear to be errors in the report, the appraiser should be given the opportunity to reconsider and make such revision as he desires. As a practical working arrangement the appraiser should have the advice and guidance of the Service as to the format of the report, etc.

Should an appraisal report be considered to be unsatisfactory and the appraiser is sure of his data, analysis, and opinion of value, he should not be requested to make a reappraisal. A reappraisal should be made by a person, or persons, other than the one, or ones, who made the original appraisal.

The above statements are predicated, of course, on the assumption that the report is complete in all respects. If review indicates that the report is not complete (Content and Format of Report) then the report may be returned to the appraiser with a request that it be completed.

Confidential Nature of Appraisal Reports

The conventional relationship between principal and agent shall govern the appraiser in not divulging his valuations or other information contained in his reports to owners of properties appraised or to the public unless he is specifically authorized to do so. Also, the contents, or portions thereof, of appraisal reports should not be divulged by employees of the Service, unless specifically authorized to do so.

Content and Format of Report

The appraisal report must be a comprehensive account of the orderly and reasonable appraisal process employed in forming an opinion of the fair market value of the property.

The appraisal report should be sufficiently documented to enable a reviewer unfamiliar with the appraised property to obtain a good mental picture of it, to understand the appraisal process employed and the analyses leading to the conclusion.

No specific form is prescribed for the appraisal report. However, in order that the report may be complete, it should contain, at least, the following information:

1. Area tract number assigned the property.
2. Name of owner and address, if known.
3. Location of the property - State, county, and other legal subdivision, if any.

4. Legal description of the property.
5. Area or acreage to be acquired.
6. Title or interest to be acquired, i.e., fee simple, or whatever the interest may be.
7. Character, topography, and adaptability of the property, i.e., "Improved mountain acreage consisting of a summer home, several supporting buildings, 35 acres of building sites including location of existing improvements, and 125.46 acres of rolling and steep timbered mountain grazing land in a recreation area."
8. Classification of land values, broken down by acres, classification, unit value, and total value.
9. Description of major structures, broken down by kind, size, type of construction, type of roof, foundation, condition, present value.
10. Assessed value of land and improvements, separately if available. Annual taxes assessed, with rate of assessment.
11. Basis for and amount of severance damage, if any, if less than the total ownership is being acquired.
12. Encumbrances, reservations, exceptions, etc., if any. If a life estate or other period of continued use and occupancy is to be reserved to the owner, the value of the reservation should be shown here.
13. Basis for estimating value: Market Data Approach with supporting data; Income Approach with supporting computations; Depreciated Replacement Cost Approach with supporting data. Only the approach or approaches used need be included.
14. Correlation of Approaches, if more than one used.
15. Certification of the appraiser. This certification should include, among other things, at least the following items: that the appraiser has personally inspected the property appraised; that the appraiser has no interest, either present or contemplated, in the property appraised; that the fee received for the appraisal is in no manner contingent upon the value reported; that no important factors affecting the value of the property were knowingly

overlooked or withheld; and the date that the appraisal report was completed. Also, if the value assigned the property has not been stated earlier in the report, the appraiser may include his estimate of the value in the certificate as an additional item.

16. A statement of the qualifications of the appraiser should follow immediately after the certification.

17. Pictures of major structures, if any, and of the land, together with a sketch map of the property, should be included as exhibits to the report.

18. The report should be bound.

Number of Copies and Distribution of Report

An original and two copies of each appraisal report are required. The original and one copy should be sent to the appropriate Regional Office; one copy to be retained in the Park files. The original of each report will be sent to the Washington Office, attention Branch of Lands; one copy to be retained in the Regional Office files.

NEGOTIATIONS AND OPTION

The Negotiations

When the appraisal report has been reviewed and found to be adequate, and authority has been granted by the Director to negotiate for an option covering the acquisition of the property, it is the responsibility of the Superintendent or his representative to negotiate with the owner for an option to acquire the property.

Because of the many facets involved in such negotiations, it is not feasible to attempt to spell out, in detail, any precise negotiation process. Every case is somewhat different. Assuming a satisfactory appraisal, the successful conclusion of negotiations for the acquisition of a property will depend a great deal upon the skill of the negotiator. Friendliness, courtesy, tact, and a willingness to listen are among the intangible factors which are indispensable in successful negotiations.

Several important factors, outlined below, as guidelines for the negotiator should also be helpful to the negotiator.

Purchase Policy. It is the purchase policy of the National Park Service to offer fair prices for property to be acquired. This is the most important reason why we invest in an unbiased appraisal of the property. It is not the policy of the Service to overpay for a particular property. On the other hand, neither is it the policy of the Service to attempt to "beat down" the appraised value of the property and acquire it for less than it is worth.

The Offer

1. Since an appraisal is only an estimate of value, a negotiator should seldom, if ever, make an initial offer equal to the highest appraisal. Seldom will the Washington Office, in authorizing negotiations for an option, authorize an offer at an amount in excess of the average of the values assigned by the appraisers. Authority to negotiate at the "average" of the appraised values does not mean, necessarily, that the initial offer to the owner should be in an amount equal to this "average." No fixed rule, in this respect, can be laid down, however. A great deal will depend upon the temperament of the individual owner and negotiator. If the negotiator, from his personal knowledge of the owner, believes that the owner has an inclination toward

"negotiation," then the initial offer, in most instances, should be less than the average of the appraised values, so that the negotiator will be in a position "to give a little" without coming back to the Washington Office for additional authority to exceed the "average" at which he is authorized to obtain an option. If, on the other hand, the negotiator from his personal knowledge of the owner, believes that the owner, by reason of age, temperament, etc., is not inclined toward prolonged "negotiations," the negotiator may make an initial offer in the amount equal to the average of the appraised values. The making of the initial offer is most important, and is a matter entirely for determination by the negotiator in the light of the circumstances in each individual case. In no event, however, may a negotiator make an offer in excess of the amount which he has been authorized to offer.

2. If, in the course of negotiations, the parties have failed to reach agreement at or below the amount for which the Park is authorized to obtain an option, the Superintendent should report the latest acceptable sales price from the owner to the Washington Office, through the appropriate Regional Director, with recommendations as to further action, if any, to be taken; i.e., drop negotiations temporarily; increase the offer up to the highest appraisal; increase the offer above the highest appraisal.

3. Authority may be granted, upon good justification therefor, to pay an amount above the highest appraisal. In most of the unusual cases in which such authority has been granted, the Service (having been delegated authority to approve options) restricts itself to paying not to exceed five percent (5%) or \$500 above the average of the appraisals secured, whichever is greater. This five percent or \$500 above the average of the appraisals usually exceeds the highest appraisal. Absolutely no indication should be given any owner that there is a possibility of paying in excess of the amount at which the Park is authorized to negotiate an option--either up to the amount of the highest appraisal or in excess of it--until the Park has been granted prior approval to offer an increased amount.

4. No concessions, such as additional special uses, reservations, etc., which were not taken into account in the appraisals should be made to induce agreement until prior clearance has been obtained from the higher offices of the Service. Such additional privileges constitute, in effect, an increase in the purchase price of the property.

Payment of Purchase Price

One frequent inquiry made by prospective sellers concerns the length of time they will have to wait for their payment check. In some cases the vendor will endeavor to set, as a condition of the sale, a fixed period within which the payment check is to be received. Receipt of a check is of vital concern to the seller but, unfortunately, the negotiator for the Government can only inform him certain steps must be observed in consummating a Government land purchase. It should be explained to him that no basis exists under which a time stipulation or condition for payment of the purchase price could be agreed to on behalf of the Government. (See chapter 7, Acquisition by Purchase.)

The troublesome feature of delay in closing a purchase can be alleviated in some degree by closing land purchases on the Attorney General's preliminary title opinion, provided the preliminary title evidence submitted by the vendor is satisfactory. (Refer to the section of chapter 7: "Closing Land Purchases on the Attorney General's Preliminary Title Opinion.")

If payment of the purchase price is of the essence and a target date is of prime importance to a seller, special handling may be requested by the field official negotiating the case. Such request must be supported by a full explanation and justification of the need therefor when submitting the papers for handling, and the Director's Office will follow up with the Department of Justice in an effort to secure special consideration. Such cases must, however, be held to an absolute minimum or our working relationship with the Department of Justice will be impaired and special considerations may not be obtainable. Accordingly, such requests will be considered only when supported by the most logical and cogent reasons.

Also, occasionally, agreement has been reached as to price and other conditions of an acquisition and the vendor, because of some minor defect in title requiring time consuming corrective action, requires the purchase price immediately, before the defect can be cleared in the normal course of events. In such extraordinary and unusual cases, where the reasons of urgency fully justify the action, the Government may institute condemnation proceedings, filing therewith a Declaration of Taking and obtaining an order of possession for possession of the property. (see also chapter 8, Acquisition by Condemnation.) In this case, payment

of the purchase price would be made into court, whereupon the vendor may apply to the court for an order to withdraw the money.

Negotiator's Authority. Care should be taken that the owner understand the extent of the negotiator's authority, all of the conditions pertaining to the acquisition of the property, all of the conditions included in the offer, the effect of the option, etc.

The Option. Without prior clearance from the higher offices of the Service, an option should not be taken for a period less than that set forth in the memorandum authorizing the Superintendent to negotiate for the option. There may be important reasons, such as availability of funds, which determine the period for which the option is taken. (See subsequent paragraphs for further details and instructions relating to the preparation of the option.)

Option Form. A standard form of option approved for use by the National Park Service is attached as Appendix 1 at the end of this chapter.

Additional Provisions. Additional provisions applicable to a particular transaction should be added to the approved form, as required. For example, if the property is to be acquired subject to the reservation of a life estate by the owner a provision to this effect should be added to the option.

Also, if water rights are to be acquired, a provision covering the acquisition of such rights should be included in the option, since in some States these rights are not appurtenant to the land.

In the event there is any question about the complete accuracy of the description of the lands being acquired and it is the intention of the parties that the owner is to convey all of his lands, then a provision may be added, following the description of the property, reading somewhat as follows:

"It is the intention of the vendor to convey, and of the United States to purchase, all of the real property of the vendor within Blank National Park."

Or, if the vendor owns other property within the Park not included within the conveyance under consideration, a clause as follows may be substituted for "Blank National Park:"

"...in Section ___, T. ___, R ___, P.M."

Preparation. Care should be exercised in the preparation of the option (which should be typed in each case) to see that inapplicable words are eliminated. For example, if the option is with a single, male individual, the words "herself" or "themselves" should be omitted when the option is typed in final form. Also, all persons having interest in the property--such as husband and wife in community property States--should sign the option.

It is most important that all of the property to be acquired and the reservations, exceptions, etc., affecting the acquisition should be carefully detailed in the option. If the Superintendent has obtained a Certificate of Title (see chapter 7, Appendix 1, Certificate of Title), the description of the property, in most cases, may be taken from this certificate; otherwise, it is incumbent upon the Superintendent to prepare an accurate description of the property and include it in the option.

The importance of an accurate option cannot be overemphasized since, as will be noted from the form, the option when approved by the Director, or his representative, becomes a contract of bargain and sale and the respective rights of the parties--the owner (vendor) and the United States--are fixed and cannot, with rare exception, be changed.

Distribution of Copies. An original and nine copies of the option shall be prepared. The original and two copies must be signed by the owner. The original and two signed copies, together with five conformed copies, are forwarded to the appropriate Regional Office which, in turn, forwards the original and two signed copies, together with four conformed copies, to the Washington Office. One copy of the option is given to the vendor for his files and one copy--conformed to the original--is retained in the Park files.

After approval of the option by the Director, one of the signed copies is returned to the Park through the appropriate Regional Director. This executed copy should be delivered to the vendor. Two conformed copies of the option are also returned to the appropriate Regional Director, one to be forwarded to the Park and the other to be retained by the Regional Office.

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*UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

NPS Area _____

Contract No. _____

LAND PURCHASE OPTION AND CONTRACT

KNOW ALL MEN BY THESE PRESENTS, That the undersigned

(state correct marital status, partnership, corporation, etc.)

hereinafter called the Seller, in consideration of the examination and appraisal of the hereinafter described property and the examination by the United States of the title thereto, and for other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby agree for himself, herself, themselves, or heirs, administrators, executors, successors, and assigns, as follows:

(1) That at any time within _____ months from the date hereof, upon receipt of written communication from an authorized representative of the United States of America, hereinafter called the Purchaser, the Seller will sell and at his own expense convey free of all encumbrances whatsoever, except any that may be administratively waived by the Purchaser, to the United States of America by proper deed of conveyance, acceptable to the Attorney General, under the conditions hereinafter provided, all of that real property, tenements, hereditaments, and its appurtenances, including such mineral and water rights, easements, and rights-of-way appertaining thereto which the said Seller has or may use in connection therewith situate and lying in the County of _____, State of _____, containing _____ acres, more or less, and more particularly described as follows:

(2) The Seller further agrees that the price at which said property will be sold to the Purchaser as hereinbefore provided shall be \$ _____.

1

Amendment No. 1

May 1961

*(3) The Seller agrees that if he is unable to show and establish title to the property aforesaid, satisfactory to the Attorney General, then, and in that event, the Purchaser may, in its discretion, institute judicial proceedings for the acquisition of said property. In such an event, the price stated in No. 2 above, is hereby agreed to, or will be stipulated to, by the Seller as the value of the aforesaid property, if acquired by the Purchaser under judicial proceedings.

(4) That, to the best of the Seller's knowledge and belief at the time of the execution of this option to purchase, the title to the aforesaid property is encumbered only by the following taxes, mortgages, liens, or other encumbrances:

which the Seller agrees to have released before recording title to said property in the name of the United States of America.

(5) The Seller further agrees, after written acceptance of this option, and upon request by the proper representative of the United States, to do the following as soon as possible and without expense to the Government:

(a) Deliver to the Purchaser a draft of general warranty deed [or such other deed or conveyance as may be satisfactory to the Attorney General] proposed to be executed by the Seller to convey the aforesaid property, accompanied by a duly executed standard Government voucher required by the Purchaser to support payment for the property.

(b) Provide the Purchaser with an abstract of title, certificate of title, title insurance policy or combined title certificate and insurance policy, or other evidence of title in a form and by an issuing party satisfactory to the Attorney General. The Attorney General will make a preliminary title examination and report setting forth any curative title data the Seller shall provide to assure the Purchaser a satisfactory title.

*(c) Correct any title defects disclosed by the Attorney General's title report. The Seller shall pay all taxes which have become liens upon the above-described property and no part thereof shall be apportioned to or payable by the Purchaser. The Seller will obtain a release of the aforesaid property from all taxes. The Seller will at his expense, when directed by the Purchaser's representative, record Seller's properly executed deed, pay for such recording fees and revenue stamps as may be required, and have, or arrange to have, the abstract, certificate, or title insurance policy extended to show an unencumbered fee simple title to the aforesaid property to be vested in the Purchaser, at which time the Purchaser will deliver the purchase price check to the Seller.

(d) If the abstract, certificate of title, etc., described in (b), above, is not furnished by the Seller within 60 days after request therefor by the Purchaser, it may be procured at Seller's expense by the Purchaser and the cost thereof shall be deducted from the purchase price recited herein. Any necessary extension of said abstract, certificate of title, etc., shall also be included in this provision.

(e) Any loss or damage occurring prior to acceptance of title to the aforesaid property by the Purchaser by reason of the unauthorized cutting or removal of products therefrom or because of fire shall be borne by the Seller; and in the event any such loss or damage occurs, the Purchaser may elect to refuse acceptance of the conveyance unless an equitable adjustment in the purchase price is made.

(6) The Seller further agrees that during the period covered by this instrument officers and accredited agents of the United States shall have, at all proper times, unrestricted rights and privilege to survey and enter upon said property for all lawful purposes in connection with the negotiations for the acquisition thereof.

(7) It is agreed when the United States of America, acting through the Secretary of the Interior, or other authorized representative, shall have accepted this option for the purchase

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*of the property as herein provided then, in that event, this instrument shall constitute a contract of bargain and sale between the parties hereto.

(8) No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of the contract or to any benefit that may arise therefrom. Nothing in this paragraph, however, shall invalidate this contract if made with a corporation for its general benefit.

(9) The Seller represents that he has, has not, employed or retained a company or person (other than a full time employee) to solicit or secure this contract and agrees to furnish information relating thereto as requested by the contracting officer. [Seller shall check the appropriate box in this statement and if a company or person has been employed or retained to procure this contract, Standard Form 119 shall be completed by the Seller and appended hereto.]

In witness whereof _____

has (have) set _____ hand(s) and seal(s) to to these presents
on this _____ day of _____, 19__.

Signed, sealed and delivered _____ (SEAL)
in the presence of:
(2 witnesses to each signature) _____ (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

Accepted _____
(Date)

Assistant Director, National Park Service*

ACQUISITION BY PURCHASE

Funds

Funds for the acquisition of lands, interests therein, improvements, and water rights may be made available on three bases:

1. Those appropriated by the Congress and available for general or, occasionally, specific land acquisition purposes.
2. Those appropriated by the Congress and which are available for expenditure only when matched by an equal amount of donated funds.
3. Funds donated by public or private bodies.

All land acquisition funds, regardless of the source, are handled by the Washington Office, with the exception of allotments to the Regional Offices or Parks for obtaining appraisals, acquisition expenses, or similar purposes; and with the exception of large acquisition projects where the funds may be allotted directly to the official responsible for the project.

Funds available under the "50-50 matching" authorization are at present available for expenditure in the National Parks only (and at Cape Hatteras by special act). In an opinion rendered on October 19, 1956 (M-36384), the Assistant Solicitor, National Parks, stated in part:

"It is the opinion of this Office that the language of the existing legislation, under which authority to accept donations subject to being matched by appropriated funds is granted, is clear and unambiguous and that it was the intent of the Congress to require that the donations be made in cash in order to be eligible for being matched by appropriated funds. Such an interpretation, which is fully supported by the legislative history, precludes the acceptance of an equivalent in land in lieu of a cash donation."

Also, in connection with donations, the Associate Solicitor in an opinion (M-36402) of January 14, 1957, stated in part:

"A contract to purchase non-Federal land in a national park subject to a reservation by the vendor of a life estate, if coupled with a prior agreement by the landowner to 'donate' funds to the National Park Trust Fund if and when the purchase is completed, on condition that the funds are to be used to construct a road from which the life tenant will benefit, is unauthorized.

"An agreement by a landowner to donate funds to the National Park Trust Fund, conditioned upon the purchase of the land for national park purposes and the use of the funds to construct a road from which the landowner will benefit as a life tenant of the land, is invalid and unenforceable since a donation under these conditions will not result in a 'voluntary transfer of property without any consideration or compensation therefor.'"

Purchase from Natural History Associations

Over the past several years various natural history associations have acquired several inholdings in areas of the National Park System and later conveyed them to the United States. These acquisitions by the associations were occasioned by various circumstances. In some instances the owners of particular properties required immediate cash; in others the properties were acquired through tax sales and quiet title judicial proceedings. In no instances have the associations failed to convey good title to the United States as provided in option contracts entered into between the Service and the associations.

However, we feel that these transactions must be carefully handled so as to preclude criticism of the Service and the associations themselves.

We find no fault in any natural history association acquiring any tract of land that is in danger of immediate development where the Service does not have funds available for immediate purchase, or where an owner requires immediate cash or a title defect requires correction. However, we feel very strongly that the association, in turn, should convey the tract to the Government at actual cost to the association without any profit to it, provided this cost is no greater than the appraised value of the tract. An itemized statement of such costs will be required in all cases in the future.

Of course, we realize the associations have only the best of intentions in acquiring inholdings and are appreciative of the aid thus furnished the Service in its land acquisition program.

In any event, in the future we will not enter into any option contract with any natural history association by which the association will receive more than actual cost, plus expenses, involved in any land purchase.

Purchases on Deferred Payment Basis

The Solicitor of the Department, in a memorandum opinion of January 30, 1956, advised the Director that purchases on a deferred payment basis, whereby the purchase price would be paid in installments over a period of years, may be made under conditions outlined in the opinion. Because of the policy, as well as the legal implications of purchases on a deferred payment basis, no negotiations looking toward an acquisition on this basis shall be undertaken (nor suggestions to owners that purchase on such a basis may be negotiated) by any official of the Service until the matter has been cleared with the Director, through the appropriate Regional Director.

In the event an owner proposes a sale on a deferred payment basis to a field official, the matter shall be referred to the Washington Office, through the appropriate Regional Office; the field official being careful, in the meantime, to make no commitments to the owner respecting the proposal.

Property to be Acquired

Normally, acquisitions should be limited to lands, interests therein (such as mineral rights, easements, etc.), improvements (such as buildings, water systems, etc.), and water rights. Except in unusual circumstances, where prior approval therefor has been obtained from the higher offices of the Service, a field official should not enter into negotiations for the acquisition of personal property, such as furniture, appliances, cooking utensils, etc. Fixtures affixed to buildings, such as bathtubs, sinks, etc., are a part of the realty and are included with the improvements to which they are affixed. If such fixtures are to be removed by the owner, this fact must be noted in the appraisal, with due allowance being made for such removal, and reference thereto must be included in the option.

Normal Procedure in an Acquisition through Negotiated Purchase. Normally, action looking to the acquisition of a tract of privately owned land within a Park originates with the Park. However, because of reservations by the Director of authority delegated to him by the Secretary in connection with land acquisitions, all acquisitions involve, at various steps in the acquisition, the Park, the appropriate Regional Office, and the Director's Office. To facilitate such acquisitions, the procedures outlined below are observed, as a general rule.

Permission to Appraise. The Superintendent, in his rather frequent contacts with the owners of private lands, should ascertain whether the owner is agreeable to selling his property. If possible, the asking price of the property should be obtained from the owner. If it appears that the asking price may not be too far out of line with what appears to be local market values, and the owner has indicated an interest in selling, permission to appraise the property should be obtained from the owner (owners), or a representative of the owner having the authority to act for the owner. Oral permission is satisfactory, although written permission is to be preferred.

Permission to appraise the property should be sought with the clear understanding to the owner, or his representative, that upon the granting of permission necessary funds will be requested for the appraisal, but that there is no assurance that funds may be obtained within any specified time.

It is well, during the course of these preliminary discussions with the owner, or his representative, to apprise the Regional Office of developments, together with an estimate of the cost of an appraisal. Through such preliminary exchanges of information, the Superintendent will be able to talk with more certainty to the owner. For example, the Regional Office may be able to advise as to the likelihood of obtaining funds with which to have the appraisal made. If there is no likelihood that funds for the appraisal can be obtained, little useful purpose is served and sometimes much harm may result to later negotiations by pursuing with the owner the question of obtaining permission to have the property appraised at that particular time.

Except in unusual cases, negotiations for an acquisition should be limited to those owners whose properties have a high priority in the Park's land program.

Authority to Appraise. The Superintendent should request authority, through the appropriate Regional Office, to have the property appraised and request that funds in an amount necessary to cover the estimated costs of such action be earmarked to cover the costs of the appraiser's services.

Much time and, occasionally, considerable money are spent, without resulting benefits, when appraisals are made of property when the owner is not interested in selling. Sometimes, also, later negotiations with owners have been jeopardized when appraisals have been made of property without the owner's permission. Accordingly, unless it has been previously determined by the Director that the property is such an essential acquisition that condemnation should be resorted to, funds for an appraisal should not be requested unless there is a reasonable basis for the belief that an acquisition may be consummated and the owner's permission to make the appraisal has been obtained.

Employing Appraisers. After authority has been received to make the appraisal, services of the required number of appraisers should be obtained. (For methods of employing appraisers, the number of appraisers required, etc., see Chapter 5, Appraisals.)

Number of Copies and Distribution of Appraisal Reports. The original and two copies of each appraisal report are required. The original and one copy should be sent to the appropriate Regional Office and one copy retained in the Park files. The original of each report will be sent to the Washington Office, attention Branch of Lands and one copy retained in the Regional Office files.

Negotiation of the Option. After review of the appraisal reports and authority has been granted to negotiate for an option, negotiations should be conducted with the owner for an option within the amount and for the period of time authorized in the memorandum granting authority to conduct negotiations for the acquisition of the property. (See Chapter 6, Negotiations and Option, for negotiation of the option, form to be used, copies to be prepared, distribution, etc.)

Closing the Transaction

When the option has been approved by the Director, or his authorized representative, on behalf of the United States, it becomes a contract of bargain and sale, binding upon the owner

to convey the property covered in the option, subject to the conditions outlined in the option and binding upon the United States to acquire the property in accordance with the terms of the option. The closing of the transaction, which involves the conveyance of title to the property to the United States, is an extremely important part of every transaction and one in which the Park plays a most vital part.

It is the responsibility of the owner (or vendor), at his own expense unless otherwise provided in the option, to prepare, or have prepared, and execute a deed conveying title to the United States with an abstract of title, certificate of title, or policy of title insurance on the form approved by the Attorney General of the United States; have the deed properly stamped with documentary revenue stamps, where required, and recorded; and take other steps as may be required to perfect title in the United States.

In some States, there is also a real estate transfer tax which is in addition to the documentary revenue stamps. This transfer tax must be paid by the vendor.

With minor exceptions, not for general application, all title evidence must be approved by the Attorney General of the United States, in Washington, before title to the property may be accepted by the Director. Usually, payment is not made to the vendor until title is accepted by the Director upon receipt of the final title opinion of the Attorney General.

It is extremely important that the deed, payment voucher, and other documents, if any, required to be executed by the vendor be signed by all owners of record, such as by a man and his wife in the case of joint ownership. Also, in those States having such a requirement, the wife should sign the renunciation of her dower interest in the property being conveyed.

In the interest of expediting payment to the vendor, which is a very important consideration in maintaining his good will and enhancing the public relations of any Park, each area may assist by observing carefully the procedures outlined herein.

Closing the Transaction (Continued)

Preliminary Title Evidence

1. Upon receipt of notice by the Park that the option has been accepted by the Director, the Park should furnish the owner (or vendor) with a copy of the accepted option, which is now a contract of bargain and sale. The vendor should be requested to:

a. furnish the Park with a draft of a deed by which it is proposed to convey the property "to the United States and its assigns" and

b. depending upon the procedure in each particular State, furnish either an abstract of title, a title certificate, or a policy of title insurance in the form acceptable to the Attorney General.

For details of the items to be covered in the draft of deed see the Regulations of the Department of Justice for the Preparation of Title Evidence in Land Acquisitions by the United States, a copy of which appears as Appendix 1 at the end of this chapter.

An abstract of title is an accumulation, or documentation, of all the recorded entries in the County in which the property is located involving the transactions affecting the particular property being conveyed. A certificate, executed either by a local attorney or by an officer of the abstract company, is included in the abstract certifying that all entries of record, as of the date that the abstract is prepared, are included in the abstract of title.

A title certificate is a certificate executed by a title corporation. It is sometimes easier to work from this type of instrument because it presents, in synopsis form, the status of the record title as of the date certified.

A policy of title insurance will be accepted by the Attorney General if prepared in a form approved by him. In the form approved by the Attorney General, title insurance policies have some similarity to a certificate of title. The effect of the title insurance policy is somewhat comparable to a policy of collision insurance one may have on his automobile. Just as your automobile insurance protects you by paying you for losses resulting from damage to your automobile, a title insurance policy protects the United States by paying the United States for any loss it may

suffer in the event, subsequently, it develops that the title to the property being acquired is found to be worthless, or deficient in any respect.

2. Upon receipt of the title documents from the owner, the Park should check them to insure that the description of the property in the draft of deed is the same as that described in the option and also in the final entry (and any entries preceding the final one which cover the property being acquired) in the case of an abstract of title, or the same as the description of the property in the title certificate or the policy of title insurance.

Differences in acreages, descriptions, etc., if any, must be supported by an engineer's certificate.

A Certificate of Inspection and Possession in the form approved by the Attorney General (see the Regulations, Appendix 1, at the end of the chapter) shall be prepared by the Superintendent or his representative. This form is sometimes identified, also, as the "Long Form Possessory Rights Report."

3. When this preliminary field check has been completed, all of the documents should be forwarded to the appropriate Regional Director, with a request that a preliminary title opinion be obtained. The Region, in turn, will forward the documents to the Washington Office, attention Branch of Lands, from which the documents will then be sent to the Attorney General, through the Office of the Solicitor of the Department.

Expediting Closing of Land Purchases on Attorney General's Preliminary Title Opinion

At a land acquisition conference in the Washington Office, ways and means of expediting the closing of land purchase cases were discussed in detail. It was generally agreed that the closing of a land purchase, after receipt of the Attorney General's preliminary title opinion (instead of awaiting a final opinion), would be most helpful in our relationships with vendors. Therefore, the guidelines outlined below should be followed.

After an option is accepted and returned to the field for the information of the vendor and the obtaining of the necessary title evidence, the Regional Office should be prepared to recommend to the Washington Office, at the proper time, whether the case should be closed on the Attorney General's preliminary title opinion.

The two main considerations involved in deciding whether to close on a preliminary opinion are: (1) the nature of the exceptions to satisfactory title and (2) the availability of competent legal assistance to assure that, in closing a land purchase case, the requirements of the Attorney General's preliminary title opinion are fully met before the purchase price check is released to the vendor.

If a Regional Office wishes to close on a preliminary title opinion, instead of awaiting the final title opinion, a recommendation to close should be deferred until the preliminary title evidence submitted by the vendor has been examined in the Regional Office. If the examination of the preliminary abstract of title, certificate of title, or title insurance policy tends to indicate that no complex or formidable title exceptions exist, the first major consideration is out of the way.

Exceptions

Some common exceptions such as taxes, liens, mortgages, deeds of trust, and assessments, which can be extinguished by the payment of money by the vendor, present no serious problem. They must, of course, be paid by the vendor before or at the time the deed is recorded. They may be paid out of the proceeds of the purchase price check, but care must be exercised in such a situation to be sure that appropriate releases are obtained when payment is made.

Frequently, mortgages, assessments, taxes, and liens are released through escrow agents where sizable amounts are involved. Public utility easements, roads, and rights of way usually may be subject to waiver by administrative personnel. The Washington Office may indicate willingness to waive these latter types of exceptions in the memorandum returning the title papers to the Regional Office, or recommendations may be given by the Region to waive the exceptions because of better knowledge of local conditions.

Affidavits of Identity, etc.

Affidavits of identity of same person, providing copies of any missing documents such as a will, adjudications, judgment, etc., are also common routine requirements. Where the Regional Office ascertains from the preliminary title papers that matters of the type just mentioned will be the probable exceptions, it can be safely assumed that they can be cured in the field after the Attorney General's preliminary opinion is furnished.

Unusual or Unresolved Exceptions

Where the exceptions are bankruptcies, tax sales, rights of infants and missing heirs, subdivision dedications, will interpretations, undisclosed rights of third party claimants, judgments, or other similar unusual and unresolved exceptions, a field check may reflect that there is considerable doubt as to what will be required to correct such possible defects. Where instances of this nature arise, the Regional Office should raise or discuss those matters in the memorandum of transmittal to the Washington Office.

If the preliminary title opinion of the Attorney General sets forth such exceptions and it still appears that a serious question will be posed as to what will cure the defects of this nature, the Washington Office may defer requesting the purchase price check until a final title opinion has been received, or defer requesting the check until the doubtful point has been resolved and cleared by the Department of Justice, either in the field or in Washington. These complex and involved exceptions do not appear often.

Payment to Vendor

When the exceptions set out in the Attorney General's preliminary title opinion have been met or waiver recommended, the vendor's deed recorded, the abstract of title, title insurance policy, or certificate of title extended to show satisfactory title to be vested in the United States of America, the purchase price may be paid to the vendor. The title papers should then be returned to the Washington Office so the Attorney General's final title opinion may be obtained.

Voucher for Payment

Whenever a land purchase case is expected to be closed on the Attorney General's preliminary title opinion it is important that the Washington Office be furnished a voucher, which is required to obtain the purchase price check from the Treasury Department after the Attorney General's preliminary opinion is received by the Washington Office. The voucher should be filled in by the Superintendent or the Regional Office as completely as possible. The executed voucher should be forwarded to the Washington Office with the preliminary title evidence, or separately before the preliminary title opinion is rendered.

Legal Assistance

Reliance is placed upon the Regional Office to determine what competent legal assistance may be utilized in closing cases. The office of the nearest United States Attorney will cooperate with acquiring agencies to assure that the requirements of the Attorney General's title opinions are satisfactorily met. Representatives of the Solicitor's Office may also be used if more conveniently located. In all instances the Washington Office should be notified who is to provide any technical legal assistance that may be required in the memorandum recommending closing on the preliminary title opinion.

Title Insurance Policies

Where title insurance policies or certificates of title provided by title companies approved by the Department of Justice are being used to reflect the condition of title, the closing procedure will be simplified and safer. This follows because the Department of Justice will, almost without exception, rely upon the title company to pass upon the condition of title.

If a "clean" final policy or certificate is issued by the title company, the final title opinion by the Attorney General will be issued almost as a matter of course. Therefore, if other than routine exceptions are set forth in the Attorney General's preliminary title opinion, it would be desirable for the Regional Office to secure the help of the title company in removing such unusual exceptions.

In any event, the title company will have to make an up-to-the-minute search of the record to insure that nothing adverse to the title has occurred between the time of the issuance of the preliminary title policy or certificate and the issuance of the final title policy or certificate stating that satisfactory title is vested in the Federal Government.

Abstracts of Title

Where abstracts of title are used, it is recommended that a Government attorney check with the abstracter to insure that the curative data are satisfactory and that the abstract is extended properly. In such cases, greater care is necessary because an abstracter may not be an attorney and his certification as to the record title may not extend to passing on the sufficiency of the curative data.

Final Title Evidence; Curative Data

When the Attorney General has rendered his preliminary title opinion, instructions will be issued to the Park as to what, if any, additional materials, referred to as "curative data," must be obtained from the owner. The draft of deed and the abstract of title, title certificate, or policy of title insurance are also returned to the Park.

Instructions. Upon receipt of the instructions pertaining to curative data, if any, and the other documents mentioned above, the Superintendent should write a letter to the owner (vendor), or his attorney or abstract company, if he has designated one to handle the transaction for him. The letter should detail the curative data which must be obtained and instructions to the owner to execute and record the deed (or prepare, execute, and record a new deed with such corrections as may be required by the preliminary title opinion of the Attorney General) and to have the abstract of title extended to, and certificate included therein executed on, a date subsequent to the recordation of the deed conveying the property to the United States.

The extension of the abstract of title consists of entering all transactions affecting the property subsequent to the date of the certificate included in the abstract accompanying the preliminary title evidence. In the case of a title certificate, or policy of title insurance, it must be extended to a date subsequent to the recordation of the deed conveying the property to the United States.

Release of Mortgage. Occasionally, a property being purchased is mortgaged to a lending institution or a third party. As a part of the final title evidence this mortgage must be released of record before the Attorney General will clear the title in a final title opinion, upon which title to the property may be accepted by the Director. Information pertaining to this mortgage, normally, appears in the "Liens" section of the option. Of course, the mortgage may be released if the vendor pays it prior to submitting final title evidence for consideration by the Attorney General.

There are times, however, when the vendor does not have sufficient funds with which to pay the mortgage prior to payment by the Government of the purchase price for the property. Where the mortgagee is willing to cooperate and release the mortgage of

record prior to actually receiving payment, either one or the other of the following methods of settlement may be observed in making final payment for the property:

1. The voucher for final payment may be made out in the names of both the owner and the mortgagee. In this case it is necessary for the voucher to be signed by both the owner and the mortgagee, and the check may be cashed only with the prior endorsement of all payees named.

2. A separate payment arrangement may be desired by the owner and the mortgagee. In this type of situation one voucher, in the amount due the mortgagee, would be made in the name of the mortgagee. Another voucher for the balance of the purchase price would be made in the name of the owner. Under this arrangement separate checks, in the amounts of the respective vouchers, would be drawn and delivered in favor of the mortgagee and the owner.

Escrow Agent. There are occasional unusual situations where use of an escrow agent may become necessary or desirable to facilitate closing a purchase. If a mortgage or lien is to be satisfied and the mortgagee is not agreeable to the procedure outlined above, or there is to be a distribution or payment to several owners or claimants from the purchase price to be paid by the United States, an escrow arrangement can be perfected to do this.

Under an escrow arrangement, the seller advises the United States of the name of the title company or bank that will act as escrow agent. Such an escrow agent must be satisfactory to the United States. Generally, a local representative of the local United States Attorney's Office can advise our field representatives if the proposed escrow agent is satisfactory.

Escrow Agreement. When an escrow agent is agreed upon, an escrow agreement is prepared at the vendor's instructions. It must be reviewed in the Director's Office (or the Solicitor's Office). It generally provides that the purchase price check will be delivered to such agent by the Government for payment to the designated parties when valid title is vested in the United States. The vendor delivers his fully executed deed to the escrow agent. The agent then has the responsibility of simultaneously releasing the mortgage or lien, of paying the money to the proper interest holders, and of recording the deed. If the final title opinion of the Attorney General should reflect that anything

additional has to be done to vest good title in the United States, the escrow agent would not release the purchase price check until such matters, too, have been covered or cleared up.

Voucher for Payment. The final payment voucher in this type of arrangement would, of course, be made to the escrow agent. A signed copy of the escrow agreement must accompany the final payment voucher.

Checking Required Data. Upon receipt of the documents from either the owner, or his attorney or abstract company, the Superintendent should check them again to assure that the requirements of the preliminary title opinion (as outlined in the instructions sent to the Park) have been met, and that all descriptions in the various documents are in agreement.

Certificate of Inspection and Possession. A Certificate of Inspection and Possession (Justice Department Form No. 26, shown in Appendix 1 at the end of this chapter) should be prepared by the Superintendent or his representative as of a date subsequent to the recordation of the deed.

Procedure after Preliminary Check of Data. When the preliminary review has been completed, all of the documents should be forwarded to the appropriate Regional Director with a request that a final title opinion be obtained, title to the property accepted, and payment to the owner be made. The Region, in turn, will forward the documents to the Washington Office, attention Branch of Lands. That Branch will then send the documents to the Office of the Solicitor of the Department to be forwarded to the Attorney General.

Final Title Opinion. Upon receipt of the final opinion from the Attorney General that satisfactory title is vested in the United States, the deed will be accepted by the Director, or his authorized representative, on behalf of the United States and the voucher (or vouchers) processed for making payment. Usually, the check (or checks) is mailed directly to the vendor, but in case it is sent to the Park, the check (or checks) should be delivered promptly to the payee (or payees). (See, also, chapter 6, Negotiations and Option.)

REGULATIONS FOR THE PREPARATION OF TITLE EVIDENCE IN LAND ACQUISITIONS BY THE UNITED STATES

The following regulations have been prepared for the guidance of Government departments and agencies, vendors to the United States, attorneys of the Department of Justice, and others having occasion to prepare or procure evidence of title including related papers in all cases of the acquisition of land by the United States wherein the title opinion of the Attorney General may be requested. These regulations supersede all previous rules on the subject. Their observance is required unless exception is made in unusual circumstances.

RESPONSIBILITY FOR PROCURING EVIDENCE OF TITLE

In direct purchase cases it is considered to be the duty of the heads of the acquiring agencies to furnish necessary evidence of title to land to be acquired by direct purchase, exchange, or donation, the expense of procuring the same to be paid out of the appropriations made for the respective departments (40 U. S. C. 255), unless by contract or by statute (40 U. S. C. 256) vendors are required to furnish such evidence.

In condemnation proceedings, generally, the necessary evidence of title is made available to the Department by the acquiring agency. In some few cases, the landowner may be obligated by contract to furnish the necessary evidence of title, in which event the landowner should be required to comply fully and promptly with the terms of his contract.

Whenever it is the responsibility of the Government to procure the title evidence, bids should be solicited immediately from competent abstracters and title companies for the furnishing of evidence of title conforming to the requirements of the Department. The bids should include, as a separate item, the cost of any necessary continuation of the evidence of title.

EVIDENCE OF TITLE ACCEPTABLE TO PRUDENT ATTOR- NEYS AND TITLE EXAMINERS IN THE LOCALITY IN WHICH THE LAND IS SITUATED WILL ORDINARILY BE ACCEPTABLE TO THE DEPARTMENT

One of the following types of evidence should be obtained after considering the costs of the several types in the interest of conserving funds:

- (a) Abstracts of title prepared in accordance with the requirements of these instructions, by acceptable abstracters, or by qualified

and competent abstracters employed by a department or agency of the Government.

(b) Certificate of title (Appendix, form 24) prepared in accordance with the requirements set forth below concerning form and contents of certificates of title, by acceptable title corporations in jurisdictions where corporations may legally issue such certificates.

(c) Owners' duplicate certificates of title issued pursuant to satisfactory State systems of title registration similar to the Torrens system.

(d) Copies of public title records duly authenticated by their official custodian or certified by an acceptable abstracter.

(e) Title insurance policies (Appendix, Form 29) prepared, in accordance with the requirements set forth in these regulations, by acceptable insurance corporations.

(f) Any other satisfactory evidence of title.

QUALIFICATIONS OF ABSTRACTERS AND TITLE COMPANIES

Individual abstracters must be attorneys at law or professional or official abstracters qualified and authorized by law to prepare and certify to abstracts; have no interest in the land to be acquired; and not be related to the vendors.

Title companies must be qualified and authorized by law to furnish abstracts, certificates of title, or title insurance policies in the State where the land lies; and have either their home office or a well-established branch office located in the State where the land lies. In addition, there must be submitted for consideration and approval information as to experience and training; organization and title plant; system of examining and abstracting title; financial responsibility (if title corporation); and reputation in the community.

FORM AND CONTENTS OF ABSTRACTS

In some sections of the country, and in many of the large cities, abstracts are prepared by an incorporated title company or by a professional or official abstracter, not necessarily an attorney. In other sections of the country the abstracts are prepared by an attorney who also obtains curative data and frequently supplements the abstract with a history of the title and his opinion as to its sufficiency. The following requirements are, therefore, subject to modification to adapt them to the type of abstract commonly in use in the locality where the land is situated:

(a) *Form and arrangement.*—The abstract should be printed or typewritten (or consist of photostatic copies of original documents),

and the description of the land covered by the abstract should appear on a caption page. Where the descriptions in abstracted items are the same as those contained in the captions, or in preceding instruments, the descriptions should not be recopied, but the abstracters should indicate that the same lands are involved. The various entries should be numbered and appear in the chronological sequence of recording. Affidavits and other papers submitted by the abstracter with the abstract should be numbered or lettered and referred to by such number or letter in the item of the abstract to which they relate.

(b) *Contents, in general.*—The abstract should contain a sufficient summary of the material portions of every recorded instrument, affecting the title to the land described in the caption, to enable the examiner to determine the nature and effect of such instruments. No attempt is made to specify all items which must be shown in the abstract, but the following, which are sometimes omitted, must be shown exactly as they appear in the records: The marital status of all grantors and grantees; the consideration and receipt thereof; the dates of execution, witnesses, where necessary, acknowledgment, and recordation of each instrument; and the due date of any unsatisfied mortgages or deeds of trust, the amount of the indebtedness secured thereby; and any reservations, limitations or conditions. Releases of homestead, dower, and other statutory rights should be affirmatively shown. Where titles to separate parcels are derived from a common preceding chain of title, a master abstract should be prepared and supplemented by individual abstracts.

Period of Search

For the purposes of this paragraph, "title instrument" means any recorded instrument purporting to evidence the transfer of a fee simple title (other than as security for debt), including direct deeds of conveyance, deeds by trustees, referees, guardians, executors, administrators, masters, or sheriffs, wills or decrees of descent, and also decrees, judgments or orders of courts of competent jurisdiction purporting to quiet, confirm, or establish title in fee simple. The "period of search," referred to in each of the numbered subparagraphs hereinafter set out, means the number of years of continuous coverage by an abstract of the record beginning with a title instrument recorded at least the required minimum number of years prior to the date of the abstracter's certificate. Regardless of the applicable period of search, all abstracts must contain or be accompanied by proof that the title was originally divested from the sovereign by patent or grant of the land involved. Any mineral or other reservations to the sovereign shall be

specifically noted. All instruments antedating the applicable period of search which are disclosed by instruments recorded within the period of search and which contain reservations, exceptions, restrictions, limitations, or other rights or interests or impose conditions or liens possibly outstanding or affecting the title, must be shown. Subject to all the foregoing provisions of this paragraph, the periods of search shall be as follows:

(1) A minimum of 60 years as to all acquisitions (including easements) except those mentioned in the following subparagraphs (2), (3), and (4).

(2) A minimum of 80 years as to all tracts to be acquired for considerations in excess of \$50,000.00 and as to Federal Building Sites.

(3) A minimum of 40 years as to "low value lands." "Low value lands" are defined as those lands as to which:

(a) The average value of the land or interests to be acquired under a single option or contract of sale does not exceed \$10 per acre;

(b) The total value of the land or interests to be acquired under a single option or contract of sale does not exceed \$3,500; and

(c) No money in excess of \$2,500 is to be expended for the construction of buildings, works, or other improvements (except roads, trails, and fire protection improvements) on the land or interest to be acquired.

(4) A minimum of 25 years as to the acquisition of easements, as follows: For telephone and telegraph lines, electric transmission lines, channel excavation, relocation of utilities such as fire alarm systems, water mains and pipes, pipelines, railroad spurs for temporary use in transporting materials for construction purposes, access and other roads, highways, spoil disposal, intermittent flowage (where the estimated frequency of flooding is not oftener than 5 years), borrow pits, and other uses of the general character and type of those herein specified. Abstracts relating to acquisitions of all other easements must be prepared in accordance with the applicable preceding subparagraphs in the same manner as abstracts relating to fee simple titles.

Records Lost or Destroyed

Where title records, for the full periods of search required above, have been lost or destroyed, or are otherwise permanently unavailable, the abstract should begin with the first available record and be supplemented by the following:

(1) A certificate of the abstracter as to the fact of the loss or destruction of the records, that no reservations, limitations, encum-

branches, or defects in the title are known to the abstractor, and that the beginning point of the abstract is accepted by competent attorneys in the community, and either;

(a) Proof of compliance with requirements of statutory proceedings, if any, to establish titles affected by the loss or destruction of the records; or

(b) Secondary documentary evidence, complying with statutory requirements, which, if offered in a judicial proceeding, would be admissible as evidence of title, and evidence of title by adverse possession as provided in the instructions set out below under Adverse Possession.

Wills and Probate Proceedings

Wills should be reproduced in full. Essential portions of probate proceedings disclosing all material facts of record must be shown, including, for example, the petition, names and ages, and the incompetency, if any, of parties in interest as shown by the record; proof of service of citations; date of approval of bond; issuance of letters testamentary; publication of notices or other action necessary to start the running of any statutes of limitations; ancillary probate of the will in the jurisdiction where the land lies, if the original probate was elsewhere; guardianship proceedings of any parties who are incompetent; and whether estate and inheritance taxes have been paid or releases thereof obtained.

When title has been or is to be conveyed by executor's or trustee's deed, the court orders or other authority of the fiduciary and sufficient of the proceedings to demonstrate their regularity must be shown.

If the title has been or is to be conveyed by the devisees, the abstract should show whether all specific legacies, debts, and taxes have been paid, and where necessary whether there has been final distribution of the estate, discharge of the executor, and closing of the estate.

Title by Descent

In every instance where title has passed by descent, the abstract should show whether there has been administration on the estate, and in case of administration, the abstract should show sufficient of the record of the proceeding to determine whether necessary jurisdictional facts existed and statutory requirements essential to the validity of the proceeding were observed, including service of necessary notices, qualifications of the administrator, and the date of the approval of his bond or other action necessary to start the running of any statutes of limitation.

In all instances where title has been or is to be conveyed by administrator's deed, the abstract should also show sufficient of the proceeding for authority to sell and convey and of the facts appearing in the record, to determine whether the proceeding was regular and all statutory requirements essential to the validity of the sale and conveyance were observed.

If there has been administration, but title has been or is to be conveyed by deed of the intestate's heirs as established in the proceeding, the abstract should show the correct names of all persons determined to be heirs as they appear in the proceeding, and should also show whether debts and charges, including all taxes against the estate, have been paid or provided for, and, where necessary, whether there has been final distribution of the estate and discharge of the administrator.

Whether or not there has been administration, if the conveyance to the United States is to be made by the intestate's heirs, and the intestate's heirs have not been established in a judicial proceeding, determination of heirship will be required as hereinafter provided.

Foreclosure Proceedings

In all cases the abstract should disclose sufficient of the mortgage foreclosed to determine the validity and effect of the foreclosure, including the sum secured, description of the premises, conditions of the mortgage, signatures, dates of execution and recording, and the nature of the default.

If the foreclosure is by judicial proceeding, the abstract should show the names of all persons made parties to the foreclosure case and sufficient of the record to determine the jurisdiction of the court, the regularity of the proceeding, whether all necessary parties had proper notice, and whether the provisions of the foreclosure statute were adequately observed.

If foreclosure is under a power of sale, the terms of the power, compliance or noncompliance therewith and with applicable statutory provisions, should appear. Partial or installment foreclosures, continuing the balance of the mortgage in effect, must be affirmatively shown.

Sales by Receivers, Execution Sales, Tax Sales, Divorces, and Other Judicial Proceedings

The abstract should fully disclose sufficient of the record of all sales by receivers, execution sales, tax sales, divorces, and other judicial proceedings affecting the title to the land to be acquired, to determine the legal effect of such sales or proceedings, and whether all statutory requirements have been observed and the time for redemption, appeal, or reopening the matter has expired.

Sales by Trustees and Others in a Fiduciary or Representative Capacity

The abstract should contain all essential parts of trust instruments, powers of attorney, and of the record of any court proceedings conferring authority for conveyances in the chain of title by fiduciaries or persons acting in a representative capacity. Any conditions or limitations on the authority of a fiduciary or representative, contained in such instruments or proceedings, or in any deed to the trustee, or to the beneficiary or principal for whom such trustee or representative is acting, should be fully set forth and, where possible, the abstract should show whether such conditions have been fulfilled.

Search for Liens of Judgments and Decrees of Federal Courts

Search is required of the Federal court records in all divisions of the district where the land lies for possible liens of judgments and decrees of Federal courts in those States which have not enacted a statute authorizing the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the State. (28 U. S. C. 1962.)

In those States which have enacted such conformity statutes (in accordance with the provisions of 28 U. S. C. 1962), no search of the Federal court records is necessary for liens of judgments and decrees, unless under the State law judgments and decrees of the State courts become liens on the property of the judgment debtor in the county where rendered, upon entry in the court where rendered, in which case search of the Federal court records is necessary if those records are located in the county in which the land is situated.

Dedication and Vacation of Streets and Alleys

Where the land includes street or alley areas, dedicated or vacated, there must be shown all matters of record affecting the ownership of such areas, including the following:

- (a) The complete proceeding had upon such dedication and, if vacated, the vacation proceedings.
- (b) All facts of record bearing on the existence or elimination of prior rights of the public, prescriptive or otherwise, and rights of public utilities, if any.

Special Assessments for Improvements, School Districts, Etc.

Abstracts containing references to assessments for drainage, school, or other special improvement districts, water, paving, sewer and other assessments, should set out, in addition to the current and delinquent

assessments, the total benefit assessments and charges against the land, and should contain references to the statutes creating the districts and establishing the liens.

Abstracter's Certificate

A satisfactory certificate of the abstracter must be made a part of the abstract. Generally, certificates will be acceptable if in the form approved by a title association of recognized standing in the State where the land is situated and if the abstracter certifies that he has examined all public records pertaining to the title for the required period of search, and that all matters of record affecting the title are correctly shown in the abstract. In those States where the liability of the abstracter is based upon the contract to search the title, the certificate should contain a statement that the abstract is furnished to the United States of America (or its grantor) and assigns. Otherwise, and generally, the certificate should not be limited to any contracting party, other person or corporation.

FORM AND CONTENTS OF CERTIFICATES OF TITLE AND TITLE INSURANCE POLICY

Preliminary reports or binders, when satisfactory in form, of approved title companies based upon a preliminary search and committing such companies to issue final certificates of title or title insurance policies in the approved form, will be accepted, as a basis for preliminary opinions which contemplate further submission of the matter for final approval of title. See Appendix, Forms 24 and 29 of these regulations.

Period of Search

In general, certificates of title and title insurance policies based upon a search of all records affecting the title and unqualified as to the period of search are preferred and should be issued. However, as to "low value" lands and specific types of easements as defined in the instructions relating to abstracts, certificates of title or title insurance policies may be limited to the periods of search prescribed in those instructions provided the certificates or policies contain statements to the effect that the title of the sovereign has been divested, and set forth any reservations which are contained in the patents or grants.

Limitation of Liability

A certificate of title or title insurance policy by one title company for a single acquisition valued at more than 25 percent of the admitted assets (after deducting existing liabilities secured or unsecured and excluding any trust or escrow funds) of the issuing company is not acceptable.

Certificates of title or title insurance policies shall not limit the liability of the title company to a sum less than 50 percent of the reasonable value of the property. As to acquisitions valued at more than \$50,000, the limitation of liability of the issuing title company under the certificate of title or title insurance policy may be limited to 50 percent of the first \$50,000 and 25 percent of that portion of the value in excess of that amount.

PLATS

The title evidence should include or be accompanied by a plat or plan, based on a survey by a competent surveyor or engineer, sufficient to enable the examining attorney to locate the land described in the title evidence. Any encroachments or rights-of-way, on or over the land, should be shown or noted on the plat. If the land is described by metes and bounds, or by lands of adjoining owners, abutting streets, ways, etc., its boundaries should be defined on the plat by courses, distances, and monuments, natural or otherwise, and the ownership and contiguous boundaries of adjoining lands and names of abutting streets, ways, etc. When the land is part of a subdivision, a copy of the subdivision plat, or the section thereof in which the land is located, should be submitted. If necessary to identify the land with a United States patent or a State grant which is the source of title, a plat of the land being acquired should be superimposed on a copy of the plat of the United States survey or State grant. If the land being acquired is part of a larger tract described in an abstract, it should, when necessary for its identification, be shown drawn to a common scale on a map showing the larger tract and any successive diminishing tracts.

SUPPLEMENTAL AND SUPPORTING TITLE EVIDENCE

The closing of transactions is often delayed due to failure to supply necessary supporting title data. Requirements covering some of these items are indicated below.

Sales by Corporations

Private corporations.—The abstract, certificate of title, or title insurance policy should contain or be accompanied by sufficient portions of the charters or other records of corporations, conveying to the United States, to determine the power of the corporations to hold and convey real estate and the validity of such conveyances. In jurisdictions where franchise taxes are a lien, or where nonpayment of such taxes or failure to file required reports or statements suspends or terminates a corporation's power to do business or transfer property, the title evidence should also be accompanied by a certificate or statement of the proper State officer showing payment of such taxes and that the corporation is in good standing. A certified copy of the resolution

of the proper corporate body, authorizing the conveyance to the United States, is required. In case of conveyances of all or substantially all of the real estate of such a corporation, a certified copy of a resolution authorizing the conveyance, enacted in compliance with pertinent statutory requirements at a meeting of stockholders, is necessary.

Public Corporations.—Where the abstract discloses a public corporation as grantor in the chain of title, or the vendor to the United States is a public corporation, the abstract should include or be accompanied by sufficient portions of the charter, resolutions, or other source of authority of each such corporation to convey land, and also with evidence of compliance with all statutory requirements necessary to the transfer of a valid title. This data should also accompany certificates of title and title insurance policies when public corporations are vendors to the United States.

Determination of Heirship

When the conveyance to the United States is by the intestate's heirs and there has been no judicial determination of heirship, the fact that the grantors are all the heirs of the deceased must be judicially established where practicable. If such judicial determination is impracticable, proof of heirship must be shown by acceptable affidavits (Appendix, form 27) of the grantors and, if possible, of two or more disinterested reputable persons having knowledge of the facts.

Adverse Possession

Evidence of adverse possession, when required, must include satisfactory affidavits of possession, which shall contain the following:

- (a) Execution by three or more reputable persons living in the vicinity of the land and having no interest in the sale of the property;
- (b) Identification of the land and a statement of the character, extent, and duration of possession for at least as long as the maximum local statutory period of limitations, prescriptions, or adverse possession, but not less than 22 years; and
- (c) All necessary facts fully set out, together with convincing proof of the establishment of title by adverse possession under local law. The affidavits should not contain mere conclusions of the affiants.

In cases where large tracts of land are being acquired which embrace what formerly were smaller tracts, the affidavits of adverse possession must relate specifically to the component parts of such tracts and contain sufficient facts to establish adverse possession to each such part.

Where two or more grants, patents, or transfers affect the same land, the exact location of the land over which the acts of possession are relied upon must be shown on a map and by the affidavits.

Where the acquiring agency does not contemplate acquisition of the land subject to mineral, or other rights or easements of any kind, appearing in the chain of title, such affidavits must show convincing proof of adverse possession against any and all such rights or interests.

Unrecorded Title Papers

In all cases any unrecorded title papers and copies of resolutions, ordinances, and title opinions containing references to statutes or cases in point relating to the condition of the title or objections thereto with respect to such land, which may be available to the vendor, should accompany the affidavits.

Deed to the United States

The deed to the United States should generally adhere to the following requirements:

- (a) Be a general warranty deed; however, this requirement may be waived, upon a proper showing, as to conveyances by States, municipal corporations, and fiduciaries and other persons acting solely in a representative capacity.
- (b) Disclose the capacity in which any grantor acts who conveys in other than an individual capacity.
- (c) Show the name of the grantor in the body of the deed and its acknowledgment, be signed by him, exactly as his name appears as grantee in the conveyance to him; and account for any unavoidable difference by a recital identifying the grantor with the grantee in the preceding conveyance.
- (d) Disclose the marital status of each grantor.
- (e) Recite the true consideration and the receipt thereof.
- (f) Convey the land to the "United States of America and its assigns."
- (g) Contain a proper description of the land.
- (h) Convey all the right, title, and interest of the grantor in and to any alleys, streets, ways, strips, or gores abutting or adjoining the land.
- (i) Contain no reservations or exceptions not approved by the department or agency of the Government acquiring the land; however, when land is to be conveyed subject to certain rights, such as easements or mineral rights thought to be outstanding in third parties, they must not be *excepted* from the conveyance, but the deed should be framed to convey all the grantor's right, title, and inter-

est *subject to* the outstanding rights, unless the contract or option expressly provides otherwise.

(j) Refer to the deed(s) to the grantor(s), or other source of grantor's title, by book, page, and place of record, wherever customary or required by statute.

(k) Contain a reference to the name of the agency for which the lands are being acquired. This statement should follow the description of the land and in no instance should it be included in the granting, habendum or warranty provisions of the deed.

(l) Release all rights of homestead, dower, curtesy, and other interests of the grantor's spouse, as required by local law.

(m) Be signed, sealed, attested, and acknowledged by all grantors and their spouses, as required by local law.

(n) If executed by a corporation, be signed in the full and correct name of the corporation by its duly authorized officer or officers, sealed with the corporate seal, attested and acknowledged, as required by local law.

(o) If executed by an attorney in fact, be signed in the name of the principal by the attorney, properly acknowledged by the attorney as the free act and deed of the principal, and be accompanied by the original or a certified copy of the power of attorney and satisfactory proof that the principal was living and the power in force at the time of its exercise.

(p) Have affixed sufficient documentary revenue stamps.

Certificate of Possession

There must be submitted, as part of the title evidence, a certificate of possession, based on an inspection and inquiry made in the course of the closing of the acquisition, by a duly authorized employee of the acquiring agency, or by an attorney of the Department of Justice. The certificate of possession must be in form approved by the Department of Justice. The standard form of certificate (Appendix, form 26) should be used in all acquisitions.

Lands Division
Form No. 24

CERTIFICATE OF TITLE

Name of title company _____ Address _____

To (_____ and) United States of America:

The _____, a Corporation organized and existing under the laws of the State of _____, with its principal office in the city of _____, hereby certifies that it has made a thorough search of the title to the property described in Schedule A hereof, beginning with the _____ day of _____, 19_____,

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and that the title to said property was indefeasibly vested in fee simple of record in ----- as of the ----- day of -----, 19--, free and clear of all encumbrances, defects, interests, and all other matters whatsoever, either of record or otherwise known to the corporation, impairing or adversely affecting the title to said property, except as shown in Schedule B hereof.

The maximum liability of the undersigned under this certificate is limited to the sum of -----.

In consideration of the premium paid, this certificate is issued for the use and benefit of (said ----- and) the United States of America (and each of them).

In Witness Whereof, said Corporation has caused these presents to be signed in its name and behalf, sealed with its corporate seal, and delivered by its proper officers thereunto duly authorized, as of the date last above mentioned.

(Name of title company)
By -----
(Title of executing officer)

Attest:

(Title of attesting officer)

SCHEDULE A

The property covered by this certificate is accurately and fully described as follows -----

SCHEDULE B

The property described in Schedule A hereof is free and clear from all interests, encumbrances, and defects of title and all other matters whatsoever of record, or which, though not of record, are known to this corporation to exist impairing or adversely affecting the title to said property, except the following:

Lands Division
Form No. 26

CERTIFICATE OF INSPECTION AND POSSESSION

I, ----- a ----- of the Department of -----, hereby certify that on the ----- day of -----, 19--, I made a personal examination and inspection of that certain tract or parcel of land situate in the County of -----, State of ----- designated

as Tract No. -----, and containing ----- acres, (proposed to be)
acquired by the United States of America in connection with the ---
----- project, (from -----
-----).
in the condemnation proceeding entitled -----
Civil No. -----.

1. That I am fully informed as to the boundaries, lines and corners
of said tract; that I found no evidence of any work or labor having
been performed or any materials having been furnished in connection
with the making of any repairs or improvements on said land; and
that I made careful inquiry of the above-named vendor (and of the
occupants of said land) and ascertained that nothing had been done
on or about said premises within the past ----- months that would
entitle any person to a lien upon said premises for work or labor
performed or materials furnished.

2. That I also made inquiry of the above-named vendor (and of all
occupants of said land) as to his (their) rights of possession and the
rights of possession of any person or persons known to him (them),
and neither found any evidence nor obtained any information showing
or tending to show that any person had any rights of possession or
other interest in said premises adverse to the rights of the above-
named vendor or the United States of America.

3. That I was informed by the above-named vendor (and by all
other occupants) that to the best of his (their) knowledge and belief
there is no outstanding unrecorded deed, mortgage, lease, contract,
or other instrument adversely affecting the title to said premises.

4. That to the best of my knowledge and belief after actual and
diligent inquiry and physical inspection of said premises there is no
evidence whatever of any vested or accrued water rights for mining,
agricultural, manufacturing, or other purpose; nor any ditches or
canals constructed by or being used thereon under authority of the
United States, nor any exploration or operations whatever for the
development of coal, oil, gas, or other minerals on said lands; and that
there are no possessory rights now in existence owned or being actively
exercised by any third party under any reservation contained in any
patent or patents heretofore issued by the United States for said
land.

5. That to the best of my knowledge and belief based upon actual
and diligent inquiry made there is no outstanding right whatsoever in
any person to the possession of said premises nor any outstanding
right, title, interest, lien, or estate, existing or being asserted in or to
said premises except such as are disclosed and evidenced by the public
records.

6. That said premises are now wholly unoccupied and vacant except for the occupancy of _____ as tenant(s) at will, from whom disclaimer(s) of all right, title, and interest in and to said premises, executed on the _____ day of _____, 19____, has (have) been obtained.

Dated this _____ day of _____, 19____.

Approved:

Lands Division
Form No. 27

AFFIDAVIT OF HEIRSHIP

I, _____, residing at
(Name of affiant)
_____, in _____
(Street and number)
_____, _____, _____
(City or town) (County) (State)
being of full legal age, for the purpose of establishing the legal ownership of certain land in _____,
(City or town)
_____, _____, _____, pro-
(County) (State)
posed to be purchased by the United States of America from all the lawful heirs of _____ late
(Name of decedent)
of _____,
(City or town) (County)
_____, who died on the _____ day
(State)
of _____, 19____, at the age of _____ years,
a resident of _____,
(City or town) (County)
_____, on oath depose and say as follows:
(State)

(1) That I was personally acquainted with the above-named decedent for the period of _____ years from _____ 19____, until his death, and that my relationship to said decedent was _____.

(2) That said decedent was married to _____
(Spouse)
_____ at _____, in 19____,
who (survived) (predeceased). (The affiant should cross out any statement enclosed in brackets which is not applicable to said decedent.)

(3) That the following is a list of the full names, relationships to the decedent, ages, marital status, and addresses of all surviving issue or other heirs of said decedents:

Full name	Relationship to decedent	Age	Married to	Address

(4) (That said decedent left no will, no issue, or no collateral heirs other than those named above and no unpaid debts or claims except as stated below.) (All statements made by the affiant will be considered to be made on the affiant's personal knowledge unless the contrary is expressly indicated.) (That I have made careful inquiry and that to the best of my information and belief said decedent left no will, no issue, or no collateral heirs other than those named above, and no unpaid debts or claims except as stated below.) (The affiant should cross out any statement enclosed in brackets which is not applicable.)

(Unpaid debts)

(5) That the value of the decedent's entire estate at death, including all property, real and personal, then owned by the decedent, did not exceed \$-----.

(6) That I am (not) interested financially or by reason of relationship to said decedent in the proposed conveyance to the United States of America in connection with which this affidavit is furnished, and understand that it is secured for the purpose of inducing the United States to purchase land owned by said decedent.

-----, 19--

-----, SS:

Then personally appeared before me the above-named -----
-----, who subscribed the foregoing affidavit and made oath that the
statements contained therein are true.

Lands Division
Form No. 28

DISCLAIMER

State of -----, }
County of -----, } ss.

We (I) ----- (wife) (husband), being first
duly sworn, depose and say (deposes and says) that we are (I am)
occupying all (a part) of the land (proposed to be) acquired by the
United States of America from -----, described
as ----- acres, Tract No. -----, lying in ----- County,
State of -----, and do hereby aver that we are (I am) occu-
pying said land as the tenants (tenant) of -----; that we
(I) claim no right, title, lien or interest in and to the above-described
premises or any part thereof by reason of said tenancy or otherwise
and will vacate said premises upon demand for the possession of said
lands by the United States of America.

Dated this ----- day of -----, 19....

(Tenant)

(Spouse)

Witnesses:

Lands Division
Form No. 29

OWNERS TITLE GUARANTEE (INSURANCE) POLICY

No. ----- Amount \$-----

(Name of Company)

for valuable consideration, does hereby guarantee [insure]

THE UNITED STATES OF AMERICA

against all loss or damage which the party guaranteed [insured] shall
sustain by reason of defects in the title of said United States of
America to the real estate or interest therein described in schedule A

or by reason of liens or encumbrances affecting the title, at the date hereof, excepting only such defects, liens, encumbrances and other matters as are set forth in schedule B below.

The total liability of this company under this policy is limited to

----- Dollars.

This policy is subject to the conditions hereinbelow set forth, which conditions, together with schedules A and B, are made a part of this policy.

In Witness Whereof, (Name of Company) has caused its corporate seal to be hereto affixed and these presents to be signed by its President and attested by its Assistant Secretary, this ----- day of ----- A. D. 19--.

President.

ATTEST:

Assistant Secretary.

SCHEDULE A

1. The title, estate or interest guaranteed [insured] by this policy.
2. Description of the real estate with respect to which this policy is issued.

SCHEDULE B

Showing defects, liens, encumbrances and other matters excepted from this policy and against which this Company does not guarantee [Insure].

SPECIAL EXCEPTIONS

(Here the Company is to insert general exceptions peculiar to the locality and special exceptions relating solely to property covered in this policy.)

GENERAL EXCEPTIONS

Governmental Powers.

1. Because of limitations imposed by law on ownership and use of property, or which arise from governmental powers, this policy does not guarantee [insure] against: (a) consequences of the future exercise or enforcement or attempted exercise or enforcement of police power, bankruptcy power, or power of eminent domain, under any existing or future law or governmental regulation; (b) consequences of any law, ordinance or governmental regulation, now or hereafter in force, (including building and zoning ordinances) limiting or regulating the use or enjoyment of the property, estate or interest described

in schedule A, or the character, size, use or location of any improvement now or hereafter erected on said property.

Matters Not of Record.

2. The following matters which are not of record at the date of this policy are not guaranteed [insured] against: (a) rights or claims of parties in possession not shown of record and questions of survey; (b) mechanics' liens where no notice thereof appears of record; (c) defects, liens or encumbrances created subsequent to the date hereof.

Refusal to Purchase.

3. This policy does not guarantee [insure] against loss or damage by reason of the refusal of any person to purchase, lease or lend money on the property, estate or interest described in schedule A.

CONDITIONS

Notice of Actions

1. If any action or proceeding shall be begun or defense asserted which may result in an adverse judgment or decree resulting in a loss for which this Company is liable under this policy, notice in writing of such action or proceeding or defense shall be given by the Attorney General to this Company within 60 days after notice of such action or proceeding or defense has been received by the Attorney General; and upon failure to give such notice then all liability of this Company with respect to the defect, claim, lien or encumbrance asserted or enforced in such action or proceeding shall terminate. Failure to give notice, however, shall not prejudice the rights of the party guaranteed [insured], (1) if the party guaranteed shall not be a party to such action or proceeding, or (2) if such party, being a party of such action or proceeding be neither served with summons therein or have actual notice of such action or proceeding, or (3) if this Company shall not be prejudiced by failure of the Attorney General to give such notice.

Notice of Writs

2. In case knowledge shall come to the Attorney General of the issuance or service of any writ of execution, attachment or other process to enforce any judgment, order or decree adversely affecting the title, estate or interest guaranteed [insured] said party shall notify this Company thereof in writing within 60 days from the date of such knowledge; and upon a failure to do so, then all liability of this Company in consequence of such judgment, order or decree or matter thereby adjudicated shall terminate unless this Company shall not be prejudiced by reason of such failure to notify.

Defense of Claims

3. This company agrees, but only at the election and request of the Attorney General of the United States, to defend at its own cost and expense the title, estate or interest hereby guaranteed [insured] in all actions or other proceedings which are founded upon or in which it is asserted by way of defense, a defect, claim, lien or encumbrance against which this policy guarantees [insures], provided, however, that the request to defend is given within sufficient time to permit the company to answer or otherwise participate in the proceeding. If any action or proceeding shall be begun or defense be asserted in any action or proceeding affecting or relating to the title, estate or interest hereby guaranteed [insured] and the Attorney General elects to defend at the Government's expense, the Company shall upon request cooperate and render all reasonable assistance in the prosecution or defense of such proceeding and in prosecuting appeals.

If the Attorney General shall fail to request and permit the Company to defend, then all liability of the Company with respect to the defect, claim, lien or encumbrance asserted in such action or proceeding shall terminate; provided, however, that if the Attorney General shall give the Company timely notice of all proceedings and an opportunity to suggest such defenses and actions as it shall conceive should be taken and the Attorney General shall present the defenses and take the actions of which the Company shall advise him in writing, then the liability of the Company shall continue; but in any event the Company shall permit the Attorney General without cost or expense to use the information and facilities of the Company for all purposes which he thinks necessary or incidental to the defending of any such action or proceeding or any claim asserted by way of defense therein and to the prosecuting of an appeal.

Compromise of Adverse Claims

4. Any compromise, settlement or discharge by the United States or its duly authorized representative of an adverse claim, without the consent of this Company shall bar any claim against the Company hereunder. Provided, however, that the Attorney General may at his election submit to the issuing company for approval or disapproval any proposed compromise, settlement or discharge of any adverse claim and in the event of the consent of the issuing company to the proposed compromise, settlement or discharge it shall be liable for the payment of the full amount paid.

Statement of Loss

5. A statement in writing of any loss or damage sustained by the party guaranteed [insured], and for which it is claimed this Company is liable under this policy, shall be furnished by the Attorney General to this Company within 60 days after said party has notice of such loss or damage and no right of action shall accrue under this policy under 30 days after such statement shall have been furnished. No recovery shall be had under this policy unless suit be brought thereon within one year after said period of 30 days. Failure to furnish such settlement of loss or to bring such suit within the times specified shall not affect the Company's liability under this policy unless this Company has been prejudiced by reason of such failure to furnish a statement of loss or to bring such suit.

Policy Reduced by Payments of Loss

6. All payments of loss under this policy shall reduce the amount of this policy pro tanto.

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BIBLIOGRAPHY

Following is a partial list of books and publications available on the subject of real estate procedure, real estate practices and appraising.

1. A Treatise on the Law of Surveying and Boundaries

By: Frank Emerson Clark

Published by: The Bobbs-Merrill Company, Indianapolis. 1922.

Contains material on the legal aspects of land surveying; survey of public lands; base lines; subdividing townships; subdivisions of sections; fractional lots; streams, lakes, and ponds; excess and deficiency; meander corners; marking lines and corners; etc.

2. The Legal Elements of Boundaries and Adjacent Properties

By: Ray Hamilton Skelton

Published by: The Bobbs-Merrill Company, Indianapolis. 1930.

Discusses boundary control; conflicting elements; excess and deficiency; highways and streets as boundaries; riparian boundaries; establishment; adverse possession; dedication; adjoining land owners, etc.

3. Surveying - Theory and Practice

By: John Clayton Tracy

Published by: John Wiley & Sons, Inc., New York, N.Y. 1947.

Covers the fundamentals of field work of surveying; use of surveying instruments; office computations; methods of plotting angles, traverses, maps; preparing maps; surveys for construction, land boundaries, public land, and aerial photography surveys. Excellent handbook for the surveyor.

4. Manual of Surveying Instructions - 1947

By: The Bureau of Land Management, Department of the Interior.
Published by: U. S. Government Printing Office. 1947.

Contains chapters on the general plan; public domain; early laws; recent legislation; surveying rules; instruments and methods; system of rectangular surveys; corner monuments; restoration of lost corners; special surveys; field notes; plats; mineral surveys.

5. McMichael's Appraising Manual (Fourth Edition)

By: Stanley L. McMichael

Published by: Prentice-Hall, Inc. New York, N. Y. 1951.

Information on appraisal problems; what is value; selecting an approach; capitalizing income into value; depreciation; interest tables; appraising for real estate loans; appraising for mortgage loans; building appraisals; valuation on acreage for subdivisions; hotel appraisals; are among the 45 chapters on all phases of appraisal work.

6. Real Property Appraiser's Handbook

By: U. S. Army Corps of Engineers

Published by: U. S. Government Printing Office. 1956.

This pocket size Handbook, designed as a ready reference manual, considers the appraisal processes; valuation; appraisal report; real estate planning reports; expert testimony; demonstration appraisal problems and agenda; rules of professional ethics of American Institute of Real Estate Appraisers; and interest tables.

7. The Appraisal Journal (quarterly publication)

Published by: American Institute of Real Estate Appraisers
22 West Monroe Street, Chicago, Illinois.

Carries articles written by highly qualified, professional real estate appraisers on varied aspects of appraising work.

8. Condemnation Appraisal Handbook

By: George L. Schmutz

Published by: Prentice-Hall, Inc. New York. 1949.

Chapters include: valuation in general and in condemnation; legal considerations; writing the report; preparation of charts; ethical considerations. Agenda contains interest, discount and other tables.

9. Valuation of Real Estate

By: Frederick M. Babcock

Published by: McGraw-Hill, New York.

A statement of the appraisal problem and discussion of the principles involved in the development of valuation methods.

10. Appraisal Handbook (Size: 3½" x 6")

Published by: San Diego Realty Board, 524 B Street,
San Diego 1, California.

A fine pocket reference book containing definitions; tables and methods helpful in preparation of an appraisal. 48 pages of tables, charts and statistics.

ACQUISITION BY CONDEMNATION

Acquisition by condemnation, when negotiations as to price fail, is a drastic action as it represents a taking without agreement by the owner. Accordingly, it should be resorted to only when the exigencies of the situation demand it. Condemnation may, however, be a helpful and mutually agreeable action to both the owner and the Government when it is necessary to clear defects in a title. It is highly important for field officials to distinguish between a regular condemnation proceeding and one in which a declaration of taking is filed.

In a regular condemnation proceeding, the suit is instituted by the Attorney General, upon the request of the acquiring agency, and prosecuted to conclusion. At the conclusion of the suit, the Government may withdraw from the proceeding and take a nonsuit if the award set in the court proceeding is considered to be too high. If the award, or verdict, is considered satisfactory, a final judgment may be taken at the decreed amount, the award paid into court, and title will then vest in the United States.

A declaration of taking is an instrument filed in a condemnation suit. It is prepared by the Solicitor's Office, upon request by the Director. Under it the United States acquires title when the declaration of taking is filed with the Clerk of the Court. Accompanying a declaration of taking will be a check representing the estimated just compensation that is paid into the court for the benefit of the owner. The declaration of taking may request immediate possession of the land, which, in practically all instances, will be granted upon any reasonable showing that such possession is necessary or desirable to enable immediate public use of the property.

The United States is committed to the payment of the ultimate award in a condemnation case if a declaration of taking is filed. If such ultimate award exceeds the estimated just compensation paid into court, the Government must pay 6 percent interest on such deficiency for the period between the time the estimated just compensation was paid into court and the final judgment is paid. Since the United States has no optional right to withdraw from a condemnation suit if a declaration of taking has been filed for land, this action should not be recommended unless there are compelling reasons for taking title and possession immediately.

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If negotiations for a strategic piece of property have deteriorated to the point that the field official believes all hope for acquisition, short of condemnation, has vanished, he should make a report thereon, with recommendations, to the appropriate Regional Director, who, in turn, will forward the report, with his further recommendations, to the Washington Office for appropriate action.

Field officials of the Service are NOT authorized to order condemnation and should not contact United States Attorneys to discuss possible condemnation proceedings until after the United States Attorney has requested their assistance in connection with a proceeding which the Attorney General has instructed him to initiate.

In making recommendations for condemnations, field officials should indicate whether they recommend filing of a declaration of taking and whether an order of possession is requested also. An order of possession is an Order of the Court (prepared either by the Judge or for the Judge by the United States Attorney) in which the condemnation suit is filed. The order vests title in and sets the date upon which possession of the property shall be surrendered to, the United States. The order may specify either immediate possession or provide for possession at some future date.

Usually, the Park's responsibility in condemnation cases involves only the securing of appraisals and an abstract or certificate of title. Full cooperation, as requested, should be given the local United States Attorney handling the condemnation, subject, of course, to available personnel, etc. Any requests for assistance from the United States Attorney which cannot be met locally should be reported immediately to the appropriate Regional Office.

ACQUISITION BY DONATION

Advance Approval

All prospective donations should be reported to the Director, through the appropriate Regional Director. Upon tentative approval by the Director, further negotiations to consummate the donation may be undertaken, subject to any special instructions which may be issued in the individual case.

Normal Procedure in an Acquisition through Donation

General. In donations, appraisals and options are not required. When negotiations following tentative approval by the Director--see above--have resulted in full agreement as to the property to be donated, it is then necessary to close the transaction through conveyance of title to the property to the United States. Observance of the following procedures will facilitate the closing of the transaction.

When Donor Pays for Title Evidence. In some cases, the donor pays the cost of obtaining title evidence required to close transactions involving donations. In such cases, the following procedure, unless special instructions respecting a particular donation are issued, should be observed.

1. Preliminary Title Evidence

- a. The donor should be requested to (1) furnish the Park with a draft of deed by which it is proposed to convey the property "to the United States and its assigns" and (2) depending upon the procedure in each particular State, furnish either an abstract of title, a title certificate, or a policy of title insurance in the form acceptable to the Attorney General. For details of items to be covered in the draft of deed see the Regulations of the Department of Justice, Appendix 1, chapter 7. As noted in the Regulations, the deed must recite the true consideration for the conveyance. Thus, in the case of donations, a nominal consideration should not be recited. Rather, the deed should indicate in the

"consideration" portion that the conveyance is for the purpose of making a gift (or donation) to the United States and its assigns.

- b. Upon receipt of these documents from the donor, the Park should check them to insure that the description of the property in the draft of deed is the same as that described in the final entry (and any entries preceding the final one which cover the property being donated) in the case of an abstract of title, or the same as that description of the property in the title certificate or the policy of title insurance. Differences in acreages, descriptions, etc., if any, must be supported by an Engineer's Certificate.

A Certificate of Inspection and Possession in the form approved by the Attorney General shall be prepared by the Superintendent, or his representative. (Refer to Appendix 1, chapter 7, for sample form.)

- c. When this preliminary check has been completed, all of the documents should be forwarded to the appropriate Regional Director, with a request that a preliminary title opinion be obtained. The Regional Office, in turn, will forward the documents to the Washington Office, attention Branch of Lands, from which the documents will then be sent to the Office of the Solicitor of the Department to be forwarded to the Attorney General.

2. Final Title Evidence

- a. When the Attorney General has rendered his preliminary title opinion, instructions will be issued to the Park as to what, if any, additional material (referred to as "curative data") must be obtained from the donor. The draft of deed and the abstract of title, title certificate, or policy of title insurance, as the case may be, are also returned to the Park.
- b. Upon receipt of the instructions pertaining to curative data, if any, and the other documents mentioned above, the Park should write a letter to the donor,

or his attorney or abstract company if he has designated one to handle the transaction for him. The letter should detail (1) the curative data which must be obtained or actions which must be taken; (2) instructions to the donor to execute and record the deed, or prepare, execute, and record a new deed with such corrections as may be required by the preliminary title opinion of the Attorney General; and (3) instructions to have the abstract of title extended to, and certificate included therein executed on, a date subsequent to the recordation of the deed conveying the property to the United States.

The extension of the abstract of title consists of entering all transactions affecting the property subsequent to the date of the certificate included in the abstract accompanying the preliminary title evidence. In the case of a title certificate, or policy of title insurance, it must be extended to a date subsequent to the recordation of the deed conveying the property to the United States. This extension of the title certificate or policy of title insurance is accomplished, usually, by the person or abstract company making the original certificate or (normally called a preliminary title certificate or a preliminary policy of title insurance) issuing a final title certificate or final policy of title insurance.

- c. Upon receipt of the documents from either the donor, or his attorney or abstract company, the Park should check them again to see that the requirements of the preliminary title opinion (as outlined in the instructions sent to the Park) have been met, and that all descriptions in the various documents are in agreement.
- d. When this preliminary check has been completed, all of the documents should be forwarded to the appropriate Regional Director, with a request that a final title opinion be obtained, title to the property accepted, and the donation be acknowledged. The Regional Office, in turn, will forward the documents to the Washington Office, attention Branch of Lands, from which the documents will then be sent to the

Office of the Solicitor of the Department to be forwarded to the Attorney General.

- e. Upon receipt of final opinion from the Attorney General that satisfactory title is vested in the United States, the deed will be accepted by the Director, or his authorized representative, on behalf of the United States, and the donation acknowledged.

When the United States Pays for Title Evidence

1. General. In any case in which a donor wishes the United States to pay the costs of obtaining title evidence, these costs may be paid, subject to available funds, by a Park from the funds of its on-site Management and Protection Activity allotment. Such costs as may be paid are: preparation of the draft of deed and the final deed; recording the deed; obtaining the abstract of title, title certificate, or policy of title insurance as the case may be; and the obtaining of curative data as required in the preliminary opinion of the Attorney General. The payment of these costs is authorized by the act of June 28, 1941 (55 Stat. 350; 16 U.S.C., sec. 14c).

2. Preliminary Title Evidence. All of the steps outlined on page 1 of this chapter under "Preliminary Title Evidence" involving cases "When Donor Pays for Title Evidence" should be taken by the Superintendent of the Park involved and the cost thereof borne by the Park.

3. Final Title Evidence. The Superintendent will proceed, at the cost of the Park, to take all of the steps outlined on page 2 of this chapter under "Final Title Evidence" involving cases "When Donor Pays for Title Evidence."

ACQUISITION BY EXCHANGE

Special Authorizations

No general authority exists for the exchange of Federally owned lands administered by the National Park Service for privately owned lands.

In some instances, Acts of Congress applicable to specific Parks, authorize the exchange of Park land for privately owned land (Theodore Roosevelt National Memorial Park, Lassen Volcanic National Park) or authorize the exchange of standing timber for land (Yosemite National Park, Glacier National Park).

Authority applicable to certain Parks provides for the exchange of national forest timber for land in the Parks. In those instances where special legislation authorizes the exchange of national forest timber for privately owned lands in certain Parks of the System, unless there are compelling reasons to effect such exchanges, it is the policy of the Service that such exchanges should not be pressed.

Prior approval of the Director is required in connection with exchanges discussed above, which may be proposed by a field official. Instructions outlining the necessary procedure in effecting such exchanges will be issued in each specific case as approval is granted.

Taylor Grazing Act and State Indemnity Lieu-Land Exchanges

Exchanges of State or privately owned lands located within boundaries of Parks of the National Park System may be made by the Bureau of Land Management for public domain of equal value outside the boundaries of such Parks. While the National Park Service is very much interested in such exchanges and frequently encourages individuals and States to make exchange applications to the Bureau of Land Management, the function of completing details of the exchange is vested in the Bureau of Land Management. Also, such exchanges are made under procedures prescribed by that Bureau.

Also, pursuant to the act of February 28, 1891 (26 Stat. 796), State indemnity lieu-land exchanges involving State-owned school sections may be made.

Field Responsibility

The important role of the Park in most exchanges, and especially in connection with proposed exchanges under the Taylor Grazing Act, is initiating recommendations to the Washington Office, through the appropriate Regional Office, concerning possibilities for such exchanges, maintaining close contact with local offices of the Bureau of Land Management, State officers and other local persons involved in the administration of lands which may be available for possible exchange, etc.

Detailed instructions governing necessary steps will be issued from time to time to those responsible for carrying out any assigned functions in connection with an exchange. Normally, however, as in the case of transfers, actions to perfect such exchanges are handled by the Washington Office.

ACQUISITION BY TRANSFER

General

Acquisition by transfer means the transfer of administration of already Federally owned lands from another Federal agency to the National Park Service.

Only in unusual circumstances do the Regional Offices or the Parks need to take any action, other than perhaps investigative, regarding the transfer of lands from another Federal agency. Usually, such transfers are made by Presidential Proclamations or Executive Orders pursuant to specific acts of Congress, or by the acts themselves.

Public Domain

Where public domain lands are proposed for addition to areas of the System, the Regional Offices or Parks may make investigations of the lands proposed for addition and make their recommendations to the Washington Office. However, the Washington Office usually completes any transactions by completing negotiations with the Bureau of Land Management, or other Federal agency having jurisdiction over public domain, and drafting the Presidential Proclamations or Executive Orders to accomplish the transfers. The additions to Hovenweep National Monument in 1951 and 1952 are examples of this type of transfer under the Antiquities Act.

Acquired Lands

Examples of transfers of acquired lands from another Federal agency pursuant to specific Congressional authority are the several transfers of lands from the Forest Service, Department of Agriculture, for the Blue Ridge Parkway. These transfers were made pursuant to the act of June 8, 1940 (54 Stat. 249). The investigative work was done by the Park and final transfers accomplished between the two Services at the Washington level.

ACQUISITION OF RIGHTS-OF-WAY - NATIONAL PARKWAYS

Requirements and procedures governing the acquisition of land (usually rights-of-way) for National Parkways are outlined in the general statement, quoted below, issued jointly by the Director, National Park Service, and the Commissioner, Public Roads Administration, and approved by the Secretary of the Interior on June 9, 1941.

"REQUIREMENTS AND PROCEDURE TO GOVERN THE ACQUISITION OF
LAND FOR NATIONAL PARKWAYS

"In order that the National Park Service may design and construct national parkways, safeguard their scenic and recreational resources and minimize hazards of all kinds, it is essential that certain requirements be adopted and adhered to. A wide right-of-way for parkways is of primary importance. The following requirements and procedure to govern the acquisition of parkway land are therefore set forth to apply to parkways specifically authorized. In connection with these requirements it is important to distinguish between a parkway and a highway.

"A parkway is a development of the highway, but differs from the usual highway in that:

- "(a) It is designed for passenger car traffic and is largely for recreational use, aiming to avoid unsightly buildings and other roadside developments which mar the ordinary highway.
- "(b) The parkway road is built within a much wider right-of-way in order to provide an insulating strip of park land between the parkway road and the abutting private property. The parkway thus controls frontage and access rights, and protects and preserves the natural scenic values. In other words, an elongated park is provided to contain the parkway road. Scenic easements may be introduced in order to secure a maximum of protection without increasing the amount of land to be acquired in fee simple.
- "(c) It preferably takes a new location, by-passing built-up communities and avoiding congestion.

- "(d) It aims to make accessible the best scenery in the country it traverses. Therefore, the shortest or most direct route is not necessarily a primary consideration.
- "(e) Important grade crossings between the parkway and intersection highways and railroads are eliminated
- "(f) Points of entrance and exit are spaced at distant intervals to reduce the interruptions to the main traffic stream. A secondary parallel road is frequently provided to carry local traffic to an access point.

Definitions

"The right-of-way for a parkway is a strip of land acquired in fee simple providing:

- "(a) The necessary area on which to construct the parkway road; and
- "(b) The insulating area between the parkway road and abutting property in order to control frontage and access rights and to protect and preserve the natural scenic or historic values.

"A scenic easement is a servitude devised to permit land to remain in private ownership for its normal agricultural or residential use and at the same time placing a control over the future use of the land to maintain its scenic value for the parkway.

"Access is the term applied to private or public rights and facilities to enter and leave a public road or thoroughfare.

"Frontage is the term applied to the rights of the landowner to avail himself of the advantage of the public highway or street upon which his property abuts for entering or leaving such street or road at any place where his land is bounded by the road or street.

Parkway Land Requirements and Procedure

"(a) The National Park Service through the agency of the Public Roads Administration will furnish to the State a preliminary location map, or maps, or otherwise describe the general route of the parkway. The State should furnish an assurance to save the United States or its agents free and harmless from claims arising out of preliminary surveys undertaken within such general areas; whereupon, the United States, or the State if so arranged, will undertake preliminary surveys for the parkway.

"(b) The National Park Service through the agency of the Public Roads Administration will furnish to the State preliminary maps showing the parkway land and scenic easement areas required.

"(c) A right-of-way averaging not less than 100 acres per mile in fee simple plus parkway scenic easement control averaging 50 acres per mile shall be provided for the gross length of the parkway in the State, but at no point shall the width of the parkway land be less than 200 feet. One hundred acres per mile is equal to a width of 825 feet. Using the acreage per mile method will permit balancing the total acreage over the entire length of the project within the State and provide for flexibility to narrow or widen the width to meet conditions. If the average acreage per mile acquired by the State for one or more sections of the parkway is less than this limit the State may be requested to acquire acreage adjoining, or adjacent to the parkway at designated locations having scenic, recreational, or historic values in order to bring the total acreage up to the limit. The variation of the width will be dependent upon topographical and other conditions, requirements of design and ease and cost of acquisition.

"(d) The State shall acquire the necessary parkway lands in fee simple together with scenic easement control on additional areas for transfer to the United States. Acquisition of parkway land along the approved location shall be undertaken in sections of sufficient length to award a contract for construction. Before construction is undertaken, however, the State shall convey to the United States by general warranty deeds land for such sections of the parkway. Deeds shall be accompanied by land maps prepared in accordance with the specifications for national parkway land maps. These maps shall be prepared by the State and should not

be confused with the preliminary maps furnished to the State referred to in paragraph (b).

"(e) In order to preserve the natural scenery, the State shall acquire existing power line and other wire line easements crossing the parkway road and negotiate new easements with the utility companies owning such easements for installing their lines in underground conduits under the parkway road in lieu of their former easements when the voltages of such lines are less than 13,200 volts. The cost of the acquisition of such easements, or of other public utility or private easements, and the cost of reconstructing and undergrounding lines in order to conform to the parkway design shall be borne by the State.

"(f) Whenever the parkway crosses a railroad, the State shall secure an easement from the railroad company for the right to cross the railroad land by means of an undergrade or overhead structure which shall be satisfactory to the railroad company. The land bounded by the lines connecting the adjoining parkway land shall be included in the easement, and when it is possible to do so the easement shall provide that title to the land on which the easement is secured shall vest in the United States when the use of such land for railroad purposes is discontinued. The easement deed shall also provide that a later construction agreement shall be entered into between the railroad company and the United States whereby the necessary expenses to the railroad caused by reason of the construction of the parkway and grade separation structure shall be borne by the United States.

Scenic Easements

"In general, scenic easements on land adjoining national parkways allow the land to continue in its present use, usually agricultural or residential, and shall provide:

"(a) That buildings, pole lines and structures may be erected on such lands only for farm or residential purposes. New buildings or major alterations to existing buildings shall be subject to the prior approval of the National Park Service. No commercial buildings, power lines or other industrial or commercial structures shall be erected on such lands, except that existing commercial buildings may be altered or the property may be otherwise improved for the purpose

of continuing established use after plans have been approved by the National Park Service.

- "(b) That no mature or stable trees or shrubs shall be removed or destroyed on such land without the consent of the grantee or its assigns, except such seedling shrubbery or seedling trees as may be grubbed up or cut down in accordance with good farm practice and residential maintenance, and except that cultivated crops, including orchard fruits, may be pruned, sprayed, harvested, and otherwise maintained in accordance with good farm practice.
- "(c) That no dump of ashes, trash, sawdust, or any unsightly or offensive material shall be placed upon such land.
- "(d) That no sign, billboard, or advertisement shall be displayed or placed upon such land, except one sign not greater than 18 inches by 24 inches advertising the sale of the property or products raised upon it.

Access and Frontage Rights

"Public Roads: In general, public roads located on parkway land will not be disturbed. However, in those instances where the design and location of the parkway necessitate a change in the location or route of such roads, the cost of relocating and constructing such sections of public roads on parkway land which has been conveyed to the United States shall be borne by the United States; and the cost of such work beyond the boundaries of the parkway land shall be borne by the State. The State shall be responsible for the maintenance of all public roads located on parkway land, except the parkway developments.

"Private Roads: There shall be no private roads crossing the parkway road at grade. The State shall furnish the means of ingress and egress other than onto the parkway road to property owners having frontage rights on sections of public roads abandoned because of parkway construction, and to tracts of land which have been isolated by the acquisition of parkway land.

"There may be incorporated in the deeds conveying parkway land to the United States reservations for the right for the State or the adjoining landowner to construct and maintain private roads on parkway land at specified locations where such roads are

necessary and when such easements have been previously approved by the Director. No such private road shall connect with or cross the parkway road at grade. Such roads shall be for the purpose of providing the adjoining landowner with a means of ingress and egress to the nearest public road. Landowners to whom such rights are reserved shall erect and maintain gates at their property lines at their own expense. The use of private roads on parkway land will be restricted to owners of property adjoining the parkway and to anyone having social or business relations with them necessary to the agricultural or residential use of the adjoining land.

State Legislation

"Due to the special character of a parkway, the availability of the benefits arising from the construction and operation of a parkway to a State in which it is located is dependent upon the enactment of adequate legislation by such State. In order that the State may acquire and convey to the United States the necessary parkway areas and easements, and otherwise participate in the development of the parkway, it is essential that the State, through its legislature:

- "(a) Designate and empower an appropriate State agency, on behalf of the State and without cost to the United States, to take all measures in furtherance of the parkway project within the State, and in particular to:
 - (1) Cooperate with the appropriate agency or agencies of the United States in conducting investigations and studies; making topographic and land surveys; preparing topographic and land maps;
 - (2) Acquire in the name of the State by gift, transfer, exchange or purchase, or by the exercise of the power of eminent domain (title and possession to vest in the State upon institution of such proceedings), lands and waters or any right, interest or easement therein, and to convey the same to the United States with covenants of general warranty for parkway, scenic, and recreation purposes; and to similarly acquire and convey to the United States quarries, gravel pits, borrow pits, easements, and servitudes deemed necessary for parkway construction, operation, or maintenance;

(3) Construct or relocate fences along parkway boundaries, cattle passes, and water supply lines to adjoining land; change overhead wires; construct underground wire and pipe crossings;

(4) Provide for the relocation, reconstruction, or abandonment of sections of public and private roads, or of railroads by agreement therewith, on parkway land as may be necessitated by the design and construction of the parkway;

- "(b) Authorize representatives of the State and of the United States to enter upon private lands for the purpose of making surveys; marking the location of the proposed parkway; investigating gravel pits, quarries and road material; gaining access to parkway lands or to areas where it is desired to study the location of the parkway; and to hold the United States free and harmless from claims arising from surveys, development, construction, operation, and maintenance of the parkway undertaken by the United States on such lands.
- "(c) Provide for the conveyance of State-owned lands and easements to the United States when the parkway extends through State-owned areas or absorbs State-owned easements.
- "(d) Authorize the acquisition of land and easements within irrigation, flood control, drainage, or other political districts or subdivisions, and provide a method of securing releases from or assuming indebtedness of such political units.
- "(e) Authorize cities, counties, and other political subdivisions of the State to convey lands and to appropriate moneys for the purposes of the parkway.
- "(f) Authorize the elimination of existing and the denial of new frontage or access rights to the parkway road and on parkway land to all adjoining landowners by one or more of the following methods: Purchase of residual tracts; excess condemnation; providing other means of access to public highways; acquisition of private rights-of-way; and adjustment of damages.

- "(g) As soon as the route of the parkway shall be determined, authorize the immediate payment of premiums on standing timber pending final purchase, in order to discourage timber cutting by owners during the negotiation period.
- "(h) Prohibit the unrestricted use of parkway lands for grazing purposes.
- "(i) Provide for the protection of parkway land by the State until the former owner shall have received full compensation therefor from the State.
- "(j) Provide for the concurrent jurisdiction of the State and the United States over parkway lands after they have been conveyed to the United States.
- "(k) Provide that by mutual agreement between Federal and State or local authorities their respective patrolmen (or police officers) may cooperate in the enforcement of laws and regulations applicable to the parkway.

"In some instances the parkway land requirements outlined herein may not be applicable. After a study and review of such cases, a supplemental agreement may be necessary between the Department of the Interior, the State, and the community or municipality affected to cover the particular conditions. These requirements and procedure supersede those approved by the Secretary of the Interior, August 29, 1934, February 8, 1935, August 15, 1936, and November 9, 1937.

(sgd) Newton B. Drury

Director
National Park Service

(sgd) Thos. H. MacDonald

Public Roads Administration.

"Approved: June 9, 1941

(sgd) H.L.I.

Secretary of the Interior "

GLOSSARY OF COMMONLY USED REAL ESTATE TERMS

Abstract of Title	Concise statements of the successive conveyances upon which title to a piece of land rests. (Usually recorded.)
Abstracter	Land title examiner.
Acceptance	An agreeing, either expressly or by conduct, to the act or offer of another so that a contract is concluded and the parties become bound.
Access	A means, place, or way of approach.
Accessibility	1. The relative degree of effort (time and cost) by which a site can be reached. 2. A location factor which will implement the most probable profitable use of a site in terms of ease and convenience.
Acquisition	The acquiring of land by negotiated purchase, condemnation, condemnation with declaration of taking, donation, executive order, proclamation, entrustment of custody, and adverse possession. Implies eagerness of effort and the inherent value of that acquired.
Accretion	The increase or acquisition of land by the gradual or imperceptible action of natural forces, as by the washing up of sand or soil from sea or river, or by a gradual recession (called reliction) of water from the usual watermark. The land added by accretion is called alluvion.
Adverse Possession	The open and notorious possession and occupation of real property under an evident claim or color of right or title.
Agent	One who acts for, or in the place of, another by authority from him.

Agreement	The language or a writing embodying reciprocal promises; a contract.
Allotment	A distribution (usually of funds) by share or portion.
Alienation	A transfer of rights or interests to another.
Amortization	1. The process of recovery, over a stated period of time, of the cost or value of an asset. 2. The liquidation of an interest-bearing debt.
Annuity	An amount payable yearly or, by extension, at other regular intervals.
Appraisal	An estimate and opinion of value, usually in the form of a written statement, resulting from an analysis of facts.
Appraiser	One vested with authority to determine the value of property.
Appropriation	That which is set apart or assigned to a particular person or use.
Appurtenance	That which belongs to another thing, but which has not belonged to it immemorially.
Assemblage	A combining of two or more sites so as to develop one site having a greater utility than the aggregate of each when separately considered.
Authorized Boundaries	Limit or extent of boundaries as established by authority of legal or rightful power.
Award	A judgment; the decision of arbitrators.
Balloon	A parcel of land without access to roads.
Blighted Area	A declining area which is seriously affected by destructive economic forces, such as encroaching inharmonious property usages,

infiltration of lower social and economic classes of inhabitants, and/or rapidly depreciating buildings, or an area in which these terminal conditions have been reached.

Certificate of Title	Instrument attesting a thorough search of title has been accomplished, with defects indicated.
Capitalization	The process of conserting into a present value (obtaining the present worth of) a series of anticipated future annual installments of income.
Claim	That which one asserts title to or right in.
Classification	Act or result of systematic arrangement in classes.
Comparison Method	Determining value by considering sales in the neighborhood of similarly conditioned sites.
Compensation	Equal return; recompense.
Condemnation	The act of the sovereign (Federal, State, county, etc.) or district, or public utility corporation vested with the right of eminent domain, to take private property for a public use when a public necessity exists.
Contour	A line connecting the points on a land surface which have the same elevation.
Contract	An agreement (usually legally enforceable) between two or more persons to do or forbear something.
Conveyance	An instrument or deed conveying the title to property.
Cost	The price paid or obligated for anything.

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Cruise	A survey of land to locate standing timber and estimate its quantity by species, products, size, quality, or other characteristics.
Damage	The estimated reparation in money for injury sustained. Severance damage is the difference between the value of the remaining portion of itself and its value as a part of the whole.
Decision	A written statement, signed by the appropriate official, setting forth findings as to law or fact with respect to an application, entry, or claim.
Declaration of Taking	Condemnation whereby the United States acquires property by eminent domain for public use.
Deflation	A reduction in value.
Demise	A transfer to another of an estate for years, for life, or at will.
Depletion	A reduction in the value of an asset by reason of the taking away of exhaustible material assets or resources, such as the removal of trees from a forest, the taking of minerals from a mine, the taking of oil from a well, etc.
Depreciation	Decline in value due to such causes as wear, tear, obsolescence, etc.
Description	The portion of a deed in which the land is described.
Disclaimer	A denial or disavowal of a legal claim.
Donation	A gift
Donor	One who gives or presents.
Earnings	Money or other benefits.

Easement	An acquired privilege or right of use or enjoyment which one person may have in the land of another.
Egress	Right of going out or leaving.
Eminent domain	The right or power of the Government to take private property for public use on making just compensation therefor.
Erosion	The wearing away of the land surface by running water, wind, or other geological agents.
Escrow	A deed, bond, or other written engagement, delivered to a third person, to be delivered by him to the grantee only upon the performance or fulfillment of some condition.
Established Boundaries	Boundaries of properties as of record, as authorized by proclamation, executive order, secretarial order, or act of Congress.
Estate	The degree, quantity, nature, and extent of interest or ownership of land or other tenements.
Exchange	A transaction whereby lands are given in return for other lands of equal value.
Exception	The exclusion of something from the effect or operation of a deed of contract which would otherwise be included.
Fertility	The quality that enables a soil to provide the proper compounds, in the proper amounts, and in the proper balance for the growth of specified plants when other factors, such as light, temperatures, and the physical condition of the soil, are favorable.
Freehold	1. An estate of inheritance, an estate for life, or an estate during the life of a third person.

2. In appraising, it is the unencumbered property, i.e., free of mortgage.

Grazing Land	Land providing forage for livestock.
Gross Income	The total amount of income before deduction of any expenses.
Heir	Any person inheriting property of a deceased person.
Hereditaments	Anything capable of being inherited.
Improvement	A useful addition to land or an existing structure.
Income	Money or other benefit, generally assumed to be received periodically.
Income Method	Arriving at an appraisal based on the capitalization of the stabilized income accruing rather than the cost estimate of the property.
Increment	An increase in the value of property due primarily to the operation of social forces rather than to the efforts or initiative of the owner.
Incumbrance	A claim or lien.
Inflation	Disproportionate and relatively sharp and sudden increase in the quantity of money or credit, or both, relative to the amount of goods available for purchase.
Ingress	Power or liberty of entering; access.
Installment	Any portion of a debt or amount divided into portions that are made payable at different times.
Intangible Value	A value which is not physical, such as surroundings, good will, a patent right, etc.
Interest	A sum paid for the use of capital.

Judgment	The obligation created by the decision or decree of a court.
Just Compensation	The amount of the loss for which a property owner has established a claim to compensation; payment of the market value of that which was taken.
Land Form	A printed form used for record keeping as follows: (NPS-L-1) Condensed deed, land, and chronological descriptions of acquisition. (NPS-L-2) Summary of acquisitions. (NPS-L-3) Alien and non-Federal lands. (NPS-L-4) Priority Program. Sketch outline adaptable for depicting sections, townships, and ranges of parcels.
Lease	A written document by which the possession of land and/or a building is given by the owner to another person for a specified period of time and for the rent specified.
Legal Description	A description of land which is technically competent, definite, and susceptible of only one interpretation, with sufficient information for the identification of the land on the ground.
Lien	A hold or claim which one person has upon the property of another as a security for some debt or charge.
Loan	Use of an article granted to another, on condition that the same be returned.
Loan Appraisal	An estimate of the market value of property for loan purposes.
Maps	Representations (usually flat) of the surface of the earth or part of it.
Maintenance	The act of keeping, or the expenditures required to keep, a property in condition to perform efficiently the service for which it is used.



Marginal Land	Land which is producing or able to produce crops which, when sold at existing price levels, will barely cover cost of production.
Market Value	The price at which a willing seller would sell and a willing buyer would buy.
Metes and Bounds	A method of describing a parcel of land by reference to the courses and distances of each straight line which forms its boundary, with one of the corners tied to an established point.
Mineral Rights	The right to extract minerals from a designated property and the right to the use and profits therefrom.
Mining Claim	A parcel of land containing precious metal in its soil or rock.
Modernization	Alteration of internal plan and facilities or of external detail of property or equipment to conform to present usage, style, form, method, or taste.
Mortgage	A conveyance of property, upon condition, as security for the payment of a debt, or the performance of a duty, and to become void upon payment or performance.
Natural Resources	Wealth supplied by nature. Mineral deposits, soil fertility, timber, potential water power, and fish and wild life are included in the concept.
Negotiation	A parley or conference held for the purpose of agreement as to terms.
Net Income	The difference between the gross income and expenses.
Net Income Table	A table predicated usually on Inwood or Hoskold valuation premise for computing present worth of future rents, income, or annuities.

Obligation	A formal and binding agreement or acknowledgement of a liability.
Obsolescence	The condition of being out of date.
Occupancy	A taking or holding possession.
Operating Expenses	Generally considered to be all expenses connected with operating except interest on and amortization of capital invested.
Option	A stipulated privilege of buying or selling a stated property, security, or commodity at a given price within a specified time.
Overgrazing	The overstocking or overuse of a range until the better forage is gone, the secondary species decline in vigor until they too are gone, and in time a change of forage occurs both in kind and quantity.
Patent	A grant of some privilege, property, or authority, made by the government or sovereign of a country to one or more individuals.
Permit	A license or warrant given by one having authority to do something not forbidden by law.
Plat	A plan, map, or chart, especially of a town site.
Plottage	The area included in a plot of land.
Plottage Value	An increment of value arising as a consequence of the combining of two or more sites so as to develop one site having a greater utility than the aggregate of each when separately considered.
Possessory Rights Report	A detailed report, usually made by someone on the scene, showing any liens, easements, or other reasons why a clear title to property might not be obtained.

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Price	The money consideration which is expected or given in exchange for commodities or services.
Priority	Order of preference, based on urgency, importance, or merit.
Productivity	The capability of a soil for producing a specified plant or sequence of plants under a specified system of management.
Property	Any subject or object of value that may lawfully be acquired and held; the right and interest which a man has in lands and chattels to the exclusion of others.
Public Domain	Land acquired by the Federal Government from the Colonial States, by purchase from or treaty with the native Indians or with foreign powers, now subject to administration, survey, and transfer under the public land laws of the United States.
Purchase	Acquisition for a price.
Purchase Price	The consideration which is agreed to be paid by the purchaser.
Quitclaim Deed	An instrument by which some right, title, interest, or claim, which one person has in or to an estate held by himself or another, is released or relinquished to another.
Ranch	An establishment for the grazing and rearing of horses, cattle, or sheep, including buildings, barns, corrals, etc.
Range	A row or line of townships lying between two successive meridian lines six miles apart.
Rate	A ratio of income to capital.
Real Estate	Land and structures of a permanent nature erected thereon; in general, all immovable things.

Real Property	A right or interest in land or whatever is attached to that land in such a way that it cannot be readily moved.
Recordation	The writing or entering in a book for the purpose of preserving authentic evidence.
Recording Fees	Charges fixed by law to cover the service of entering a matter for record.
Rehabilitation	Re-establishment of the earning capacity of property to a former state of solvency and productiveness.
Rent	A certain sum agreed upon between a tenant and his landlord and paid at fixed intervals by the tenant to the landlord, for the use of land or its appendages.
Replacement	The substitution of a capital asset which has become exhausted or inadequate; something which replaces that which is worn out or discarded.
Reports	Official statements of facts.
Reservation	A limiting condition; a tract of the public land set aside for some special use, as for forests, for Indians, etc.
Reversion	The right to repossess and resume the full and sole use and proprietorship of real property which temporarily has been alienated by lease, easement, or otherwise.
Reverter	Refers to deed containing clause providing for reversion of land donated or dedicated to a specified use when such use is terminated or abandoned or is used inconsistently with the trust.
Right	Any power or privilege vested in a person by law, custom, etc.

Right of way	A right of passage over another's ground; the land occupied by a railroad for its tracks especially for its main line; the strip of land over which a public road is built, or the strip over which an electric power transmission line passes.
Riparian Right	The right of an owner of land containing or bordering on a watercourse or other body of water in and to its banks, bed, or waters.
Scenic Easement	A restriction imposed upon the use of the property of a grantor for the purpose of preserving the natural state of scenic and historical attractiveness of adjacent lands of the grantee, usually the city, county, state, or federal government. The grantor agrees to refrain from the erection of any advertising structure, or the erection of any new structure, or alteration of any existing structure, etc., without the consent of the grantee.
Severance	Condemnation of a portion of a tract resulting in diminishment of area.
Severance Damage	The difference between the value of the remaining portion of a tract of land by itself and its value as a part of the whole.
Soil	The natural medium for the growth of plants on the surface of the earth, of organic and mineral materials.
Surface Rights	Rights to land exclusive of mineral rights.
Survey	The operation of making observations and measuring that will determine the relative positions of points on the earth's surface. Measurements may be either linear or angular.
Taxes	A charge, usually pecuniary, laid upon persons or property for public purposes.

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Timber Rights	Rights reserved to a grantor or third party to cut growing timber.
Title	The chain of evidence which indicates that a person is entitled to a property or estate and lawful possession of the same.
Title Company	A company which searches titles and guarantees a grantee against all loss or damage sustained by reason of defects in title to real estate or interest granted, under certain conditions.
Title Opinion	A written report by one who has authority, usually the Attorney General, stating whether he considers a title to land sufficient for acceptance and, if not, listing defects.
Topography	The delineation of a surface, including its relief, the position of its streams, lakes, roads, cities, etc.
Township	The area included between two township lines and two range lines, normally containing 36 sections of approximately 640 acres each.
Transfer	The conveyance of right, title, or property from one person to another.
Trend	Prevailing tendency or inclination. An arrangement of statistical data in accordance with its time of occurrence.
Use	That enjoyment of property which consists in its employment, occupation, exercise, or practice.
Valuation	The estimated worth.
Vendor	One who transfers property for a consideration.
Vicinity Sales	Current realty transactions of neighborhood properties.

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Voucher	A printed or written instrument in the nature of a bill, which shows on what account and by what authority a particular payment has been made.
Warrant	To guarantee against harm, loss, damage, etc.
Warranty Deed	A deed containing a covenant whereby the grantor guarantees to warrant and defend title to the property conveyed.
Water Right	The right to a definite or conditional flow of water, usually for use at stated times and in stated quantities for irrigation or for hydroelectric power development.
Willing Buyer	A prospective purchaser who is satisfied with the terms specified.
Willing Seller	One who is ready to dispose of property under the terms specified.
Zoning	The public regulation of the character and intensity of the use of real estate through the employment of the police power. This is accomplished by the establishment of districts in each of which uniform holding restrictions relating to use, height, area, bulk, and density of population are imposed upon the private property.

GENERAL

Purpose

It is the purpose of this section to deal only with those special uses which may be authorized by field officials of the National Park Service under revocable special use permits.

While the Secretary is authorized to issue other than revocable permits for certain types of uses of Government-owned lands administered by the National Park Service, authority to issue nonrevocable permits, licenses, or leases has not been delegated to field officials of the Service. Accordingly, any application for a use that is proposed to be granted under other than a revocable permit should be submitted to the Washington Office, through the appropriate Regional Office, with recommendations for suitable action.

Policy

Nonconforming uses in the areas of the National Park System that disturb or damage natural features or encroach upon their setting are not compatible with the preservation and use of such areas pursuant to the act of August 25, 1916 (39 Stat. 535; 16 U.S.C., sec. 1). Accordingly, the use of Government-owned lands and buildings in areas administered by the National Park Service may be granted only in cases in which such use or occupancy by persons or other agencies will not interfere with the purposes for which the Parks were created or with Government activities in the Parks.

Where it is necessary to provide for use of Government-owned lands and other property by private individuals or firms, such use shall be covered by a revocable special use, or other revocable type of permit, as may be appropriate; unless, of course, the right to use and occupy the property is provided for in some other manner, such as the reservation of a life estate by the owner of property acquired by the United States.

The purpose of issuing revocable permits for all uses of Federally owned lands and other property within a Park is to make a written record of the proposed use and the conditions covering that use. Each request for a permit should be scrutinized carefully in the light of the general principles governing a particular type of permit, as discussed later in this section,

to ascertain the effect the issuance of a permit would have on Service objectives and programs, and whether reasonable alternatives exist which would solve the need of the applicant.

Additional statements of policy relating to particular cases are included in succeeding chapters in this section dealing with the respective uses. (Also see chapter 4, Part 100, Volume 1, Administrative Manual.)

Authority

Delegated Authority. Authority to issue revocable special use and other types of permits has been delegated by the Director to the respective Regional Directors. The Regional Directors, in turn, have redelegated this authority, in varying extent, to the Superintendents within their respective Regions. The authority of the individual Superintendent with respect to the issuance, or revocation, of revocable special use, or other types of permits, may be found in the most recent Delegation of Authority Order of the Region in which the Park is located. (Also see page 1, Purpose, above.)

Statutory and Other Authority. A revocable permit does not grant a property right to the permittee, but rather gives the permittee a privilege to use certain specified Federally owned property, subject to the conditions set forth in, and during the term (or until its revocation) of, the permit. Thus, while there is no specific statutory authority authorizing, generally, the issuance of revocable permits, the authority granted to the Secretary by the act of August 25, 1916 (39 Stat. 535; 16 U.S.C., secs. 1-4), for the "supervision, management, and control" of the areas of the National Park System may be relied upon. In this connection, the general authority of Department Heads to issue revocable permits or licenses for the use of Government-owned lands and other property has been recognized in opinions of the Attorney General and the Comptroller General.

Also, the Secretary, pursuant to the authority vested in him by the act of August 25, 1916, supra, has issued rules and regulations for the "use and management" of the areas of the National Park System which provide for the issuance of permits for various types of uses.

In addition, in some Parks there are special acts of Congress granting specific authorization for the issuance of permits, licenses, or leases for the use of Government-owned lands.

Permit Forms

Most Commonly Used Permit Forms of General Application.
The most commonly used permit forms which have general application to all areas administered by the National Park Service are:

1. Special Use Permit (Form 10-114, revised) and continuation sheet (Form 10-114a), the policies, procedures, etc., respecting the use of which are covered in this section. This form and the continuation sheet may be obtained by requisition (Form DI-1) to the Washington Office. (See No. 5, Building Permit, for reference to procedure covering the assignment of land and buildings to concessioners.)

2. Permit for Collecting Specimens (Form 10-741), the policies, procedures, etc., respecting the use of which are covered in material issued by the Division of Interpretation.

3. Grazing Permit (Form 10-111), the policies, procedures, etc., respecting the use of which are covered in chapter 2, Part 630, Volume 6, of the Administrative Manual.

*4. Concession Permit, the form of, policies, procedures, etc., respecting the use of which are covered in the Concessions Management Handbook.

*5. Building Permit, for use of Government owned buildings by concessioners. Refer to the Concessions Management Handbook. Also, for the assignment of Government owned land to concessioners for use in connection with concession operations, see Volume 22 of the Administrative Manual.

*6. Motion or Sound Pictures. Permission for the filming of any motion or sound pictures, except by amateurs and bona fide news reel photographers, must be obtained in writing from the superintendent. See Chapter 1, section 1.29, Title 36, Code of Federal Regulations. *

Special Permit Forms

In the interest of uniformity in the preparation and issuance of special use authorizations, all special use permits should be prepared on the form specifically designed for that purpose - Form 10-114 (revised) and Form 10-114a, Continuation Sheet. Any special provisions for water surface use for pier, wharf, or floating dock installations; quarrying operations; saddle and

Special Permit Forms (Con.)

pack horse use; taxicab or sightseeing bus service, etc., may be locally duplicated, as Continuation Sheets. Such duplicated special conditions should carry the permit number and name of the Park for purposes of identification in the event of detachment from the face of the permit.

In instances where the Superintendent feels the need of knowing details of the permittee's business, and requires the submission of schedules of rates, financial reports, etc., the authorization should be by means of a concession permit instead of a special use permit. The concession permit should be prepared in accordance with the procedures outlined in the Branch of Concessions portion of the Administrative Manual.

*Application for Permits

Data to Accompany Applications Involving Construction or Development Work. Any applicant who contemplates substantial construction or development on Government lands to be used under a special use permit, shall be required to submit with his application, a sketch, map, plan, specifications, or proposed contract, as may be appropriate, to the Superintendent to give him an adequate opportunity to analyze and understand the project that is proposed to be constructed or developed on the park land before any action is taken on the application for permit.

The data submitted with permit applications must be reviewed by the Superintendent in all cases to assure that the work or project is not objectionable from a park or conservation standpoint. Applications presenting unique problems shall be referred by the Superintendent to the Regional Office for review and approval. Where an applicant's preliminary material reflects that the nature and scope of the undertaking are objectionable, the applicant should be notified thereof with an appropriate explanation.*

Essential Provisions

Property Rights. Care must be taken that permits are so drawn as not to vest any property rights in the permittee. To be certain that this is accomplished, Condition No. 15, Revocation, of the printed Special Use Permit (Form 10-114, revised) provides for the revocation of the permit at the discretion of the Director.

Essential Provisions (Con.)

Land Under Permit Subject to Entry by Service Officials.

The area which the permittee is privileged to use must always be subject to entry by the officials of the Service. A provision to this effect is included as Condition No. 3, Rights of the Director, of the printed Special Use Permit (Form 10-114, revised).

Nondiscrimination Clause. Executive Order 10925 of March 6, 1961 (26 F.R. 1977), Part III, Subpart A, Section 301, states that: "Except in contracts exempted in accordance with section 303 of this order, all government contracting agencies shall include in every government contract hereafter entered into the following provisions:". It has been administratively determined that the word "contract" as used in the above-quoted section, includes special use permits. Therefore, any special use permit proposed to be issued by the National Park Service, authorizing the use of park lands shall include the prescribed nondiscrimination clause unless an exemption is obtained under section 303 of the Executive Order. A nondiscrimination clause is included as Condition No. 4, of the printed special use permit (Form 10-114, revised).

Criteria for Using Special Use, or Other Types of, Permits

Special use permits are issued normally to authorize individuals, firms, semipublic, or other, public agencies to use Federally

owned properties (lands, buildings, dock, roads, trails, etc.) in a manner which does not generally involve the transaction of business by the permittee with the public visiting the Park. For example, a pack or saddle horse operator having a base of operations on privately owned lands, either within or outside of a Park, in the nature of a dude ranch, may request authorization to use our Park trails for the enjoyment of his guests. No business is solicited by the operator in the area which we administer. This use, if authorized, should be properly authorized under a special use permit.

A boat operator in Houghton, Michigan, may request authority to dock his boats at our piers at Isle Royale. He conducts no business in the Park but merely loads and unloads passengers or cargo at the dock. This is a special use which should be authorized under a special use permit. Similarly, a boat operator desiring only to transport passengers between Key West and Fort Jefferson National Monument, making use of our piers only, would require a special use permit.

Concession permits are issued normally to authorize a permittee to transact business within, and with visitors to, a Federal area and, in connection therewith, to use Federally owned properties (lands, buildings, docks, roads, trails, etc.). For example, a pack or saddle horse operator may request authority to operate a corral on Federally owned land within a Park for the purpose of providing saddle or pack horse services. His prospective customers are visitors to the Park and he proposes to solicit their patronage within the Park for a consideration. Such activity, if authorized, should be covered by a concession permit.

Either a special use or a concession permit may be used in the case of an applicant who may desire to establish and operate a corral on Federally owned lands within a Park for the purpose of providing saddle or pack horse services and who also desires to use the trails of the Park in connection with a dude ranch which he operates on privately owned lands either within or outside of a Park. In this type of situation the whole operation should be covered in one permit and the type of permit to be used should be determined by the dominant activity. We must of necessity rely on the Superintendent and the Regional Director to determine what is the dominant activity.

In addition to the above, further reference regarding concession permits and grazing permits, respectively, may be found in other parts of the Administrative Manual.

Preparation and Distribution of Permits

Numbering of Permits. Only those permits providing for a fee are assigned a contract number. For the procedure governing the numbering of permits requiring the payment of a fee, refer to chapter 7, section 3, page 1, et seq., Volume 7 of the Administrative Manual. Since a contract number is considered to expire with the termination of a permit, it is necessary that a new contract number be assigned to a new permit, even if issued to the same permittee for the same use as indicated in the previous permit.

Coding "No-Fee" Permits. Permits not providing for payment of a fee shall be coded by means of a symbol to identify the Park, the permit number, and the calendar year in which the permit is issued. The prefix of the symbol for each Park is composed of the correspondence file code letter for the individual Park. Below are examples of the desired numbering system for "no-fee" type permits:

ACAD 1-58; ACAD 2-58; ACAD 3-58; etc.
BLRI 1-58; BLRI 2-58; BLRI 3-58; etc.
SEQU 1-58; SEQU 2-58; SEQU 3-58; etc.

Provisions of Permits. The printed forms are self-explanatory and, in general, contain all necessary provisions. Additional special provisions should be included on Continuation Sheets (Form 10-114a) attached to the permit, as may be necessary to cover special conditions affecting the use authorized in the permit. In this connection see Essential Provisions, above, and the succeeding chapters in this section dealing with the particular use to be authorized, for special conditions which may be used, where applicable, in a particular permit.

Distribution of Copies of Special Use Permits

Each permit should provide for the payment of a fee. However, in connection with permits issued for certain uses involving the official business of the Government, as discussed in succeeding chapters of this section, the fee may be waived. Following is a

table showing the distribution of "fee" and "no-fee" special use permits:

<u>Color of Permit</u>	<u>When a FEE is to be Collected</u>	<u>When NO FEE is to be Collected</u>
<u>WHITE</u>	Files of Finance Office maintaining records for on-site audit. (Signed by issuing official, approving official, if any, and permittee.)	To Superintendent's file. (Signed by issuing official, approving official, if any, and permittee.)
<u>YELLOW</u>	To permittee. (Signed by issuing official, approving official, if any, and permittee.)	To permittee. (Signed by issuing official, approving official, if any, and permittee.)
<u>PINK</u>	To Branch of Lands, Washington. (This copy may be conformed.)	To Branch of Lands, Washington. (This copy may be conformed.)
<u>SALMON</u>	To Regional Office. (This copy may be conformed.)	To Regional Office. (This copy may be conformed.)
<u>BLUE</u>	To Final Opinions and Orders file of the Park. (This copy may be conformed.)	To Final Opinions and Orders file of the Park. (This copy may be conformed.)
<u>GREEN</u>	To Superintendent's file. (This copy may be conformed.)	This copy <u>NOT USED</u> .

Final Opinions and Orders File

The Department of the Interior, pursuant to the provisions of the Administrative Procedure Act, has issued a regulation with respect to the maintenance of files of final opinions and orders, which provides that each bureau of the Department shall maintain, in the headquarters office of the bureau, or in the field office in which final action is taken, a file containing copies of all final opinions and orders issued by the bureau (including those

approved by the Secretary) in the adjudication of cases, except opinions and orders which the head of the bureau or the Secretary for good cause requires to be held confidential and which are not cited as precedents. Such files may be inspected by the public at any time during regular business hours.

Pursuant to the foregoing Departmental regulation, the Service has indicated that copies of the following listed documents must continue to be maintained in the final opinions and orders file in the field office in which the final action is taken:

1. Collection permits, Class A and Class B, and applications therefor..
2. Concession permits
3. Revocable special use permits
4. Grazing permits
5. Automobile permits
6. Campfire permits

Terms and Renewals of Permits

Terms of Permits. It is desirable that all permits be for a definite term of years, at the end of which time they will expire automatically and a new application must be made for the issuance of a new permit. Depending upon the circumstances in each particular case, the term may be for one year or any other period determined by the official issuing the permit, PROVIDED, however, That the term, in any case, may not exceed twenty (20) years.

Lifetime permits have proved to be a source of trouble and should be avoided whenever possible. It has been difficult to determine dates of deaths that terminate such permits and there are frequent requests to continue such permits to relatives of deceased persons.

To insure annual review of each permit and a determination as to the continuing need for it, each permit should require payment of a yearly fee, and continuity of use.

Additional provisions with respect to the term of permits are included in succeeding chapters in this section discussing the particular use involved.

Renewals of Permits. Revocable special use and concession permits should not be extended by letter beyond their expiration date. If it is desired to continue the authorization for which either type permit was initially issued, then a new permit should be prepared and executed.

Fees

The Congressional policy with respect to fees and charges by Federal agencies is set forth in the act of August 31, 1951 (65 Stat. 290; 5 U.S.C., Sec. 140), providing, in part, as follows:

"It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency * * * to or for any person * * *, except those engaged in the transaction of official business of the Government, shall be self-sustaining to the fullest extent possible, and the head of each Federal agency is authorized by regulation * * * to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, * * *."

Reservations in Deeds for Continued Use

Occasionally, a deed conveying property to the United States will reserve, either for life or for a term of years, continued use and occupancy of the property to the former owner. In such cases, normally, it is not necessary to issue a permit for this continued use and occupancy. However, each deed should be checked to ascertain if a special use permit is required since, sometimes, the deed or the option will provide for the issuance of a special use permit for continued use and occupancy. Also, the deed may provide as to what fee, if any, should be charged for this continued use and occupancy. Such provisions with respect to fees must be respected in the issuance of the permit. However, if the use and occupancy continues beyond the period provided for in the deed, then the fee for such continued use and occupancy beyond the

Reservations in Deeds for Continued Use (Continued)

original period is for determination in accordance with the policy set forth in this paragraph and elsewhere in this section discussing the particular use to be authorized.

Establishing Fees to be Charged for Permits

As a general guide to establishing the fees to be charged for special use permits, we should all bear in mind that this Service is the guardian of Federal property having a large monetary, and even larger conservation and recreational, value. Our first obligation is to exclude to the fullest extent any uses which are nonconforming to the over-all purposes and interests of the Service. For such permits as are issued, we should arrive at the fairest possible monetary value of the privileges granted by the permit and neither place ourselves in the position of permitting use of Federal property too cheaply nor of exacting exorbitant prices for the uses of such property. We believe that, generally, a safe guide to follow would be to charge the rates that a businessman or company would charge for similar privileges under similar conditions.

In addition to this general statement, further statements with regard to the amounts of fees to be charged may be found in succeeding chapters of this section discussing the particular use to be authorized.

*Cancellation of Permits

Administrative Procedure Act. Section 9(b) of the
Administrative procedure act of June 11, 1946 (60 Stat. 237), provides as follows:

"Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements." (Underscoring supplied).

The term "License" has been defined in the act as including "the whole or part of any agency permit, certificate, approval,

Cancellation of Permits (Continued)

registration, charter, membership, statutory exemption or other form of permission."

*Procedure to be Followed in Cancellation of a Permit. The following procedure is established to meet the requirements of the foregoing provisions, and will generally govern the action taken to cancel special use permits. (Permits should be clear in stating that no refund of fee is due by reason of cancellation of a permit).

*1. Cancellation at Request of Permittee. In cases where, for one reason or another, the permittee has no further use for the privilege granted under the permit, the responsible field officer of the area concerned should obtain a written statement from the permittee to that effect, requesting that his permit be cancelled effective on a specific date. When this statement has been received it should be recommended or approved by the local field official and copies, in duplicate, sent to the Regional Office which will send one copy to the Washington Office.

*A sample form to be used in instances where the permittee requests cancellation of a permit will be found in Appendix 1 at the end of this chapter.

*2. Cancellation at Discretion of the Director. In many instances, especially along the Parkways, permits have been issued which provide for their cancellation in the discretion of the Director, Regional Director, or Superintendent, as the representative of the Director, should future development plans of the area require the use of the land or any portion thereof covered by the permit. Such permits usually provide that a new permit bearing a new number will be issued to the same permittee, for the remaining portion of the land not needed for Service developments. In such cases, the request for cancellation of the permits should be accompanied by new permits for the remaining portion of the land continued to be used by the permittee.

*Should the permittee not desire a new permit for the available area, then the procedure outlined in Section 1, Cancellation at Request of Permittee, above, should be followed.

*3. Cancellation for Violation of Any Conditions of Permit. A careful check should be maintained by the Regional Offices and field offices on the activities of all permittees. When there is evidence of failure on the part of a permittee to comply with the

Cancellation of Permits (Continued)

*conditions of the permit, this fact should be called to his attention in writing, by certified or registered mail, return receipt requested. He should also be advised that failure to correct the violation within such reasonable time as may be designated by the responsible officer will result in cancellation of the permit.

*In order to avoid possible misunderstandings it is suggested that reference to the Administrative Procedure Act be omitted in any notices and opportunity to correct the violations called to his attention, fails to correct the unsatisfactory conditions then the local field official should notify the permittee his special use permit has been cancelled effective on a specified date and state the reasons for such cancellation. Copies of the cancellation notice should be sent in duplicate to the Regional Office which will transmit one copy to the Washington Office. *

*SAMPLE FORM
REQUEST OF PERMITTEE FOR CANCELLATION OF PERMIT

Place
Address
Date

Superintendent
Park or Monument

Dear Sir:

I no longer have need for the authority granted to me
under the terms of Special Use Permit No. _____
dated _____, and issued (or approved) by
_____.

I therefore request that the above described permit
be cancelled effective _____.

It is understood that no refund is due on this cancellation.

Sincerely yours,

(Permittee)

Endorsement:

** Recommended _____ Date _____

At the request of _____ the above Special
Use Permit was cancelled effective _____.

(Superintendent or Regional Director)

** NOTE: This line will be omitted when final action was taken by
the Superintendent. If final approval was by Regional
Director, the Superintendent will then recommend cancellation.

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*When this Statement has been received it should be recommended or approved by the Superintendent. The same officer of the National Park Service that "issued" or "approved" the permit (Superintendent or Regional Director) should be the proper representative of the Service to take the final action in cancellation of the permit.

Four copies of the cancellation request will be prepared. The original will be retained by the area where final action on the permit was taken. A copy signed by the Superintendent will be given to the permittee; a signed copy (signed by both the permittee and Superintendent) will be sent to the Field Finance Office responsible for billing the permittee; and a signed or conformed copy will be mailed to the Regional Office and Washington Office.*

PERMITS FOR AGRICULTURAL USES

Policy

It is the policy of the National Park Service to issue revocable special use permits for conforming agricultural uses, as discussed in this chapter, for the maintenance of certain portions of historical, military, parkway, and other areas where it is desired to perpetuate or restore man-made conditions. In this connection, a chief objective in the administration and management of historical areas is the presentation to the public of the original historical scenes as nearly as possible. Thus, the preservation of, and gradual restoration of, the historical scene and keeping open of Parks that are an important part of the interpretive program may be achieved, in part, through mutually advantageous permit arrangements with farmers for the cultivation of lands formerly in agricultural use. The permittee should understand, and be in sympathy with, the historical objective of the Service. In permitting agricultural use of such lands, it is the intent of the Service to foster land use practices which will improve the soil and prevent uses which tend to impoverish the soil. (Also see policy statements in chapter 4, Part 100, Volume 1, Administrative Manual, and in Part 615, Leasing, Departmental Manual, Department of the Interior.

Term of Permit

Where conditions are favorable, permits for agricultural uses should be issued for a period of several years, renewable annually upon payment of the annual fee, continuity of use, and compliance with the conditions of the permit. Generally, three to five years is the minimum period in which desirable rotation of land use may be accomplished to the mutual advantage of the Service and the permittee. The term of the permit is for determination by the field official issuing the permit, PROVIDED, the term does not exceed a period of 20 years. (See chapter 1, this section.)

Fee for Permit

A fee at least equal to that normally charged for similar facilities in the local community, under conditions of use comparable to those set forth in the permit, should be charged for permits granted for agricultural uses. Of course, fees comparable to those charged in the local community must take into

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account, also, comparable conditions under which the use is permitted. That is to say, soil improvement practices required under the permit are to be taken into consideration in determining a fee based on fees comparable to those charged in the local community.

Permit Form to Use

Agricultural uses should be authorized on Special Use Permit Form 10-114 and Continuation Sheet Form 10-114a.

Each application for a permit must be considered individually and, if the permit is to be issued, its provisions must be adjusted to meet existing conditions of each situation in order to best achieve the objectives of the Service in issuing the permit. Thus, such special provisions as may be necessary to cover a particular use should be included, in addition to the general provisions included in the printed form, by the field official preparing the executing the permit.

Permittees

In most cases, the permit will be with a neighboring farmer who would add the cultivation of the Government-owned acreage to his normal agricultural activities. There are a few instances, however, in which neighboring farmers would not be interested in a small acreage, but rather would be interested in obtaining the use of sufficient land and structures so that the farmer could move onto the Government-owned lands and work them as his principal activity. This category of use, if permitted, may be classed as a "resident farmer" permit. Examples of areas where this type of use may be permitted to the mutual advantage of the Service and the permittee are Gettysburg National Military Park and in the Yorktown Section of Colonial National Historical Park.

Types of Uses

In general, the various uses would include one or more of those listed below:

General Farming. Experience has shown that it is necessary to work out with the permittee a program of crop rotation. This program should be outlined as a condition of the permit, including a plan designed to meet the requirements of the soil, crop, and local market. This procedure will guard against the tendency to exploit the soil. Plant requirements warrant a study of the soil,

topography, precipitation, and other elements as a basis for determining what crops may be used in the rotation. Impoverished soils probably have resulted more often from continuous planting of a single row crop, leaving the soil exposed for a long time without grass or other close-growing vegetation, and from improper pasturing, than from all other causes combined.

Continuous use of Service land for agricultural purposes should be justified on the basis of permits which have for their objective assistance in maintenance operations, presentation of land use typical of a given historical period, improvement of soil fertility, and conservation of moisture. It is particularly desirable that such permits be issued on a long-term basis in which grasses and other close-growing vegetation, including legumes, would be established for at least three out of five years in rotation. The cooperative assistance of specialists should be obtained to make an analytical study of all phases of the proposed agricultural use, even where the local customs and conditions would limit immediate application of all improved practices. When favorable conditions obtain, the permit should be so prepared as to accomplish the necessary maintenance, preservation of the historical scene, soil improvements, and installation of repair of physical improvements connected therewith.

Hay Crops. Land under this classification would be used for production of hay to be harvested and removed by the permittee. There are exceptional cases where a portion of the hay crop may be required for soil mulching and erosion control. Continuous removal of hay would eventually reduce plant nutrients in the soil to the extent that the land would no longer be productive of suitable crops without incurring some additional expense incident to the application of lime and fertilizer.

Pasture. Under this classification land would be used for pasturing livestock under fence as distinguished from grazing on the open range. Permanent fences should be typical of the historical period involved. Since rarely, if ever, could such fences be built by permittees, temporary fencing may be erected only with prior approval of the Superintendent. Such fences would remain the property of the permittee and would be subject to removal on reasonable notice by the Superintendent. Protective measures should be prescribed which will prevent exhaustion of the soil and its accompanying evils. Delayed grazing, rotation of pastures, mowing, and other means of removing undesirable plants, increasing plant food, mulching barren spots, repair of fences, improvement

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of watering facilities and other measures may become a part of the permit. These would not relieve the permittee of his obligation to make an annual cash payment but would affect the amount of such payment. An analysis should be made of the soil, ground cover, quality of feed, and methods for improving the vegetation as a basis for determining the allowable carrying capacity of the area to be used and the period of years when pasture would be permitted.

Special Conditions

Since conditions governing general agricultural uses vary to such a great extent depending upon the particular area involved, it is not feasible to attempt to detail special conditions which should be included in special use permits for agricultural uses. It should be pointed out, however, that every precaution should be taken to incorporate into the permit all of the conditions which govern the uses permitted under the permit.

PERMITS FOR RIGHTS-OF-WAY FOR UTILITY LINES

General

Permits which may be issued for uses included within the meaning of this subheading will include electric power lines; telephone and telegraph lines; radio and television structures; liquid lines including water, oil, and sewage; steam lines; gas lines; canals and ditches; and railroads. Special uses involving water rights and related water lines or ditches are covered in Section 3 of Water Resources and Water Rights of this Handbook.

Term of Permits

Where the permit issued for one of the above type uses relates to a facility or activity which represents a relatively small investment on the part of the permittee, the period of the permit should normally be one year. Where a considerable expenditure by a permittee is involved, such as a high voltage transmission or distribution line; long distance telephone or telegraph circuit; a railroad line; main oil, gas, or water lines, the permit should be for a corresponding longer period of time, but in no event longer than the maximum period of 20 years. (See also Term of Permits, chapter 1, of this Section.)

Fee for Permits

Each permit shall state the fee and rate. The rates to be charged for each of the above listed lines or crossings shall conform to rates charged for similar facilities or services in the locality, but shall not be less than \$5.00 per mile or fraction thereof per annum, with a minimum charge of \$5.00 per annum, unless otherwise covered by a special agreement or act of Congress. In the case of electric lines of Cooperatives of the Rural Electrification Administration and the lines of a United States Government agency, the normal fee will be indicated in the permit followed by the following statement:

"The fee herein prescribed is waived pursuant to the policy statement of the National Park Service submitted March 5, 1947, to the REA Administration."

(See APPENDIX 1 at end of this chapter.)

Likewise, where the permit covers lines installed to serve exclusively a Park administered by the Service, the fee will be

waived. Where service to the Government is incidental to that supplied by the line beyond the area, a charge will be made.

Permit Form, Special Conditions, etc.

Permit Form. Uses discussed in this chapter should be authorized on Form 10-114 and Continuation Sheet 10-114a.

Special Conditions, etc.

1. Sketch Map. A sketch showing the location of the proposed special use, limits of work, and other pertinent data should be attached to or typed upon the permit.

The location of the line or crossing on Government land should be based on the least practicable disturbance to the natural, scenic, historic, or scientific features of the area. Advice of the Landscape Architect should be secured as to possible methods of screening clearings, undergrounding lines, avoiding unnecessary cutting of trees, providing offset or changed angle crossings of overhead lines, etc. The permit should include a description of the method of accomplishing the work involved, such as design, materials, and color of structures; fencing, cutting, clearing, trenching, etc.; specifying widths, depths, and other limitations in accordance with good practice and with a view toward eliminating the need for redisturbing the ground, planting, etc.; or other unnecessary maintenance work. Access to the line or crossing for construction and maintenance purposes should be agreed on in advance and described in the permit.

2. Standard Special Conditions for Use, Where Applicable

- a. All changes or disturbances of the existing conditions of the area including the landscape, roads, walks, or structures during construction or maintenance are to be repaired or replaced by the permittee as nearly as possible in the original condition in a manner acceptable to the Superintendent.
- b. All work of installation, maintenance, or removal of lines or crossings is to be performed with the knowledge of, and under the supervision of, the Superintendent.

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- c. If the line or crossing is abandoned, the permittee is to remove all visible evidence and leave the area in as nearly the original condition as possible in a manner acceptable to the Superintendent.
- d. The clearance height of overhead crossings shall be in accordance with State regulations and the National Electrical Safety Code.

*A statement by the National Park Service with reference to the waiving of fees in the case of electric lines of Cooperatives of the Rural Electrification Administration and the lines of a United States Government agency, is contained in the following letter of March 5, 1947:

"DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
CHICAGO, ILLINOIS

March 5, 1947

"Mr. Claude R. Wickard, Administrator
Rural Electrification Administration
Department of Agriculture
Washington 25, D. C.

"My dear Mr. Wickard:

"Deputy Administrator William J. Neal's letter of February 12, concerning special use permits which are being prepared for the Blue Ridge Electric Membership Corporation of Lenoir, North Carolina, for crossing the Blue Ridge Parkway with overhead power lines, has been received.

"We appreciate the non-profit features of the Rural Electrification Administration financed cooperatives which provide electric service to various members and sympathize with the belief of the Directors that the cooperatives should not be compelled to pay for rights-of-way crossing public property. We believe, however, that there are certain principles involved in the case of the Blue Ridge Parkway which should be given special consideration.

"In our previous correspondence with you, we have pointed out the importance of eliminating as many of the overhead crossings as possible with a view toward maintaining the natural scenic qualities of the country that the Blue Ridge Parkway traverses. We recognize that certain overhead crossings are inevitable, and we believe that, with judicious planning in the location and combination of crossings, much can be done to make the public less aware of these intrusions on the landscape.

*"Our principal reason for charging \$1.00 per year for each crossing is to maintain these crossings on a permit basis. The yearly renewal of each permit means that both the permittee and the United States Government recognize that the crossing is a privilege and not a continuing right which through a period of years and continuous use might otherwise come to be regarded as a permanent easement. Yearly renewal also means that changing administrative officials are kept cognizant of the status of the various permits. We issue hundreds of annual permits for various types of easements and uses of Parkway lands. They are difficult to keep in order from year to year, unless they are handled on an annual renewal basis, and though the charge is principally a means of maintaining the permit status, we occasionally are able to eliminate adverse uses through non-payments of the annual fee.

"However, in view of the regulations of the Bureau of Land Management (43 CFE 245.14) referred to in your letter which exempt your activity from payment of the fee prescribed therein, as a matter of policy we will also waive the payment of the \$1.00 annual fee for power line permits issued by this Service for REA cooperative projects. Superintendent Sam P. Weems of the Blue Ridge Parkway, Box 88, Roanoke 16, Virginia, is being advised to make corrections in the permits now under consideration in accordance with this policy. Future permits for REA cooperative projects will be handled accordingly.

Sincerely yours,

/s/ Hillory A. Tolson,
Acting Director"

PERMITS FOR ACCESS OR OTHER SPECIAL USE OF ROADS

General

Requests for special use permits for roads, roadways, and access, in practically every instance, are requests for a special privilege that result in a use of Government owned land that does not conform to the basic purposes and use of the Park. Therefore, in common with the issuance of all other types of special use permits, requests connected with roads, roadways, and access should be thoroughly scrutinized and completely justified in order to protect the interest of the Service and reduce to a minimum the possible impairment of Government land and facilities. The most frequent requests for road, roadway, and access special use permits revolve around the following situations.

Use of Service Road in Preference to State Road. A request of this nature may involve the use of a Park or motor road to perform a trucking or hauling task that would be costly, and sometimes impossible, if the available State or county roads were used.

In this case, the granting of a special use permit should not be considered if such trucking or hauling is intended to be a continuing operation upon which the permittee bases his business or contract obligations. For example, an individual or company intends to carry on a trucking business between Marathon and Terlingua, Texas. The shortest and best route between those two towns is via the Park roads in Big Bend National Park. The State routes between those two points are rough and nondirectional and cost of hauling over them would naturally lead to a request to use the Park roads instead. Granting a permit under such a situation would be tantamount to the Service's supplying a facility that rightfully belongs to, and is a responsibility of, the State or county and a special use permit should not be granted.

Access. No permits are to be issued for private roads entering or crossing a Parkway motor road at grade in accordance with Section 1, Chapter 12, pages 5 and 6 of this Handbook. We look to the State to furnish ingress and egress to private lands as part of the initial acquisition program.

General (Continued)

Access Roads and Trails for Prospecting and Mining. For the policy and procedure with respect to the issuance of permits for the construction of access roads and trails under mining laws applicable to Mount McKinley National Park and Death Valley, Glacier Bay, and Organ Pipe Cactus National Monuments, see Chapter 6 of this section dealing with Permits for Miscellaneous Uses.

Term of Permits

The term of the permit is for determination by the official issuing the permit: PROVIDED, That the term, in no event, may exceed 20 years. As in the case with all special use permits, the term should be for the minimum period justified by the use and investment, if any, contemplated or required. (See also Term of Permits, chapter 1, this Section.)

Fee for Permits

The fee for the permit is determined by the official issuing the permit, taking into consideration comparable charges for similar privileges, if any, granted outside of the Park, the benefit to the permittee, etc. As will be noted from the discussion in paragraph 1 above, some access permits may be issued for a nominal consideration only. (See also Fees, chapter 1, this Section.)

Permit Form, Special Conditions, etc.

Permit Form. Uses discussed in this chapter should be authorized on Form 10-114 and Continuation Sheet 10-114a.

Special Conditions, etc. There should be included in the permit special conditions that explicitly set forth the limitations of use and obviate misunderstandings which may result in misuse of Government property. Special conditions should indicate specific features of construction items that conform to proper landscape control and satisfactory construction practices. Special conditions relating to maintenance and repair, obliteration and restoration in the event of permit termination, load limitations; speed; and any other items necessary to protect the Government's interest, should also be made a part of the permit. Some suggested standard special conditions which may be used, where applicable, are:

1. Parking, on access road over Parkway lands, of motor and other equipment is prohibited.

2. This road shall not be over _____ feet wide and shall be restricted to private use only.

3. Staggered Grade Crossings: Use of the Parkway motor road by trucks, farm equipment, and other slow moving traffic is limited to sections specified herein.

4. The use of a sled on or along the motor road is prohibited.

5. The roadway shall be _____ feet shoulder to shoulder, and shall be graded by the permittee, or his authorized representative. Construction shall be in a manner acceptable to the Superintendent.

6. The permittee is responsible for the repair of any damages to Park lands by use of this access by the permittee or his agents.

7. Obliteration: Clean-up and obliteration of wheel tracks shall be performed by the permittee upon completion of use of this access.

8. All equipment using the Park road shall be mounted on rubber tires.

9. This permit limits the total weight of vehicle and load to _____ tons. Any equipment to be moved over the Park roads heavier than this weight limitation will require an additional permit.

10. This permit is subject to suspension at the direction of the Superintendent during periods of freezing and thawing or when travel would be detrimental to the Park roads.

11. The Government shall not be required to keep the Park roads cleared from snow or ice during winter months or to sand the roads during such periods.

12. The speed of vehicles shall not exceed _____ miles per hour.

13. A performance bond in the amount of \$_____ shall be deposited with the Superintendent and shall be retained by the National Park Service until the obliteration of this road is effected and any damage to Park lands is repaired.

14. Public liability for the entrance and exit of vehicles using the above-mentioned access roadway shall rest with the permittee, including responsibility for proper signing or other means of warning Park motorists of danger.

PERMITS FOR USE OF STRUCTURES

General

Primary Use by Contractors, etc. Occasionally, it may be necessary to permit the use of a Government-owned building by a contractor or other party. This is particularly true with respect to telephone company contracts when, pursuant to the utility contract, the National Park Service agrees to make quarters or storage space available to the company.

Incidental Use by Agricultural Permittees. The use of structures, which is incidental to a primary use, such as agricultural use discussed in chapter 2 of this Section, should be provided for in the permit covering the primary use and special conditions, if any, relating to the use of necessary structures, etc., should be included in the permit covering the primary use.

Primary Use by Concessioners. For the use of Government-owned structures by concessioners, see the applicable provisions of Volume 22 of the Administrative Manual. As will be noted from the various references in Volume 22, it is not contemplated that Special Use Permit Form 10-1114 will be used to authorize use by concessioners of Government-owned structures.

Term of Permits

Unless otherwise provided in the contract document, as for example in the case of a structure to be used by a telephone company, or in the deed of conveyance, as in the case of a permit issued to a former property owner, the term of the permit is for determination by the official issuing the permit: PROVIDED, That the term, in no event, may exceed 20 years. As is the case with all special use permits, the term should be for the minimum period justified by the use and investment, if any, contemplated or required. (See also Term of Permits, chapter 1, this Section.)

Fee for Permits

No permit, unless otherwise provided in a deed of conveyance or a contract, should be issued without adequate compensation to the Government for the use granted. The fee for the permit is for determination by the official issuing the permit, taking into account comparable charges for similar privileges outside of the

area, the value of the property to be used, the benefit to the permittee, etc. (See also Fees, chapter 1, this Section.)

Permit Form, Special Conditions, etc.

Permit Form. Uses covered in this chapter should be authorized on Form 10-11⁴ and Continuation Sheet 10-11^{4a}.

Special Conditions, etc. Sample special conditions which may be incorporated in a permit for the use of Government-owned structures are as follows:

1. All utilities, services, and heat shall be furnished by permittee. (When the Government is to furnish this utility, this provision should be changed accordingly.)

2. The permittee shall be responsible for returning the premises to the Government at expiration of the permit in substantially the same condition as when accepted, except for normal wear and tear, and acts beyond his control.

3. The permittee shall maintain the premises in an orderly manner and make all essential minor repairs, including repairs to auxiliary buildings, fences, driveways, etc., which may be necessary for reasonable upkeep during his occupancy (including specific repairs as follows:--strike out if not applicable).

4. The permittee shall comply with the regulations of the National Park Service governing the Park, shall observe all sanitary laws and regulations applicable to the premises, and shall keep the premises in a neat and orderly condition and dispose of all refuse and locate outhouses and cesspools, if any, as required by the Superintendent.

PERMITS FOR MISCELLANEOUS USES

Concession Permits

For the form to be used in issuing concession permits, as well as the policy and procedure governing the issuance of such permits, see the *Concessions Management Handbook.*

Grazing Permits

Grazing on the open range, as distinguished from pasturing of livestock under fence--see chapter 2 of this Section--is authorized on Form 10-111. For the policy, procedure, etc., governing the issuance of grazing permits, see the appropriate provisions of chapter 2, Part 630, Volume 6, of the Administrative Manual. *Also see chapter 1, section 1.20, Title 36, Code of Federal Regulations.*

Permits for Scientific Collecting

The policy and procedure relating to the issuance of permits for Scientific Collecting are contained in the Memorandum to All Field Offices (FO-14-55), dated January 31, 1955, to be incorporated in Volume 4, Part 5, of the Administrative Manual. *Also see chapter 1, section 1.15, Title 36, Code of Federal Regulations.*

Leases for Vacation Cabin Sites

At the present time there are some vacation cabin site areas available only at Lake Mead National Recreation Area. The policy and procedure relating to the leasing of such sites are available from the Superintendent, Lake Mead National Recreation Area, Boulder City, Nevada.

Permits for Defense Use of Parks

From time to time, Superintendents are confronted with requests by local representatives of the Department of Defense for use of portions of a National Park, Monument, or Historical Area. In all instances, such requests should be referred to the Regional Director for transmittal to the Director for a final determination.

Prospecting and Mining

Mineral Leasing, etc. In the areas of the National Park System, prospecting and mining on Federally owned lands is permitted only within Mount McKinley National Park and Death Valley, Glacier Bay, and Organ Pipe Cactus National Monuments. Authority to issue permits, licenses, and leases in connection with such mining operations has been delegated to the Bureau of Land Management. (See Title 43, Code of Federal Regulations.)

Access Roads and Trails. The policy and procedure relating to the issuance of permits for the construction of access roads and trails under mining laws applicable to Mount McKinley National Park and Death Valley, Glacier Bay, and Organ Pipe Cactus National Monuments are as follows:

Both the legal and administrative features of the regulation of access roads and trails under the mining laws relating to several of the designated areas have been considered. Although the laws differ slightly, it has been decided that administrative regulation should be the same in all cases.

The basic authorization of mining implies authority for normal access to any portion of the Park or Monument whose surface use has not been restricted or denied by special conforming regulations. Accordingly, any road or trail is available to all miners and prospectors regardless of who has constructed them. Acting for the Secretary, the National Park Service may impose reasonable conditions relating to location, design, construction, and maintenance for proper integration of parallel uses of the land surface, to protect natural values for which the Park or Monument has been established, and to assure reasonable public safety. Conditions must be in writing and it has been decided to use the standard Special Use Permit for the purpose.

The Service cannot deny permission to construct a requested road or trail to provide normal access, but it can enforce normal regulations to prevent accidents due to lack of proper design or maintenance. It can require the applicant to maintain necessary standards during his use of the road or trail, and

can close it with barricades and posted notices if it becomes unsafe.

Standards of design, construction, and maintenance should only be commensurate with the intended use, and shall be properly defined in the permit to eliminate any controversy after the construction is started. It is not sufficient to make a blanket reference to the National Park Service standards which differ for roads, truck trails, and foot trails, and for different grades of each. It shall be the duty of the Superintendent to post all roads and trails of low standard with warnings as to grades, clearance, passing opportunities, and similar features.

The initial permit should be for sufficient time to complete construction, may provide for automatic annual renewals, and shall specify the use of land for construction and maintenance of a mining road, truck trail, or foot trail, as the case may be. It should be issued on the basis of written application with supporting sketch and such written description as may be necessary to show location and standards. The Superintendent may edit the plan and description, initialing the changes, and should then make the instruments part of the permit, by attachment and reference, before it is signed by him and the permittee.

There shall be no fees for such permits.

Condition No. 7 of the Special Use Permit Form 10-114 (Rev. Dec. 1956) should be deleted and replaced by condition prescribing that bridges, culverts, and other structures shall become the property of the United States on completion of the road, and shall not be removed without replacement, except at the direction of the Superintendent. It does not seem practical to require road obliteration on termination of permittee's use. In many cases, the permittee will terminate his use because of lack of funds for continued mining or prospecting activities. In other cases, the road or trail may be used by others who should be permitted to use it subject to assumption of maintenance, or until it becomes unsafe, with or without Special Use Permit as conditions warrant.

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Permits for Use of Water

For the policy and procedure governing the issuance of permits for either the incidental or primary use of water and water rights, see Section 3, Water Resources and Water Rights, of this Handbook.



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